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The High Court Procedure Act and Rules

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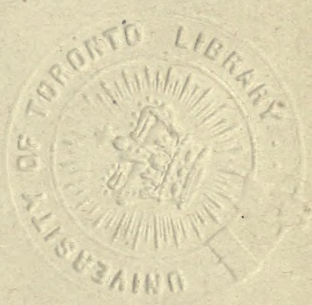
The High Court Procedure Act, 1903-1915

and

Rules of the High Court of Australia

together with

Cross References and Notes of Cases and Index.



BY

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the late MR. JOHN SCHUTT,
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His Honor Mr. Justice Schutt,
respectfully dedicated.

PREFACE

From his long experience in the Supreme Court Library, Melbourne, during which he was constantly engaged in helping lawyers to discover where to find their law, Mr. Fuhrman is, in my opinion, eminently fitted for the task of writing a book such as this. I have myself assisted in revising the work, and can testify that it is marked by the exactness and care which those who know the author would expect. A practical proof of the value of the book was given by the frequent use of the manuscript in the Library during a period of several months.

L. F. S. ROBINSON, B.A., LL.B.,
Supreme Court Library, Melbourne.

April 30th, 1921.

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A.L.R.	Argus Law Reports
A.L.T.	Australian Law Times
C.L.R.	Commonwealth Law Reports
S.R. (N.S.W.)	State Reports, N.S.W.
V.L.R.	Victorian Law Reports
W.A.L.R.	Western Australian Law Reports
W.N. (N.S.W.)	Weekly Notes, New South Wales

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HIGH COURT PROCEDURE ACT 1903-15. (a)

An Act to regulate the Practice and Procedure of the High Court.

[Assented to 28th August, 1903.] (b)

(a) Act No. 5 of 1915, s. 1, sub.-s. 2:—The High Court Procedure Act 1903, as amended by the High Court Procedure Amendment Act 1903, and by this Act (Act No. 5 of 1915) may be cited as the High Court Procedure Act 1903-1915.

(b) This is the date of assent to the High Court Procedure Act 1903. The High Court Procedure Amendment Act 1903, was assented to on 21st October, 1903, and the date of assent to the High Court Procedure Act 1915, was 1st May, 1915.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

PART I.—PRELIMINARY.

1. This Act may be cited as the *High Court Procedure Act* 1903-15(a) and is divided into parts as follows:— Short title.

Part I.—Preliminary, ss. 1, 2.

Part II.—Procedure of the High Court
- Seals, &c., ss. 3-5.
- District Registries, ss. 6-11.
- Trial of Issues, ss. 12-15.
- Trial of Indictable Offences, ss. 15A and 15B.
- Evidence, ss. 16-22.
- Defects and Errors, ss. 23, 24.
- Change of Venue, s. 25.
- Judgment and Execution, ss. 26-28.
- Receivers and Managers, ss. 29, 30.
- Actions by and against the Marshal, s. 31.
- Rules of Court, ss. 32-34.

PART III.—Appeals to the High Court { Security, ss. 35, 36. Procedure, ss. 37-39.

THE SCHEDULE. (*b*)

(*a*) Act No. 7 of 1903, has been amended by the High Court Procedure Amendment Act 1903 (No. 13 of 1903), and by the High Court Procedure Act 1915 (No. 5 of 1915). The Amendments so made have been incorporated in this print, and not printed separately.

(*b*) The Rules contained in the Schedule to the High Court Procedure Act 1903, have on a number of occasions been altered by Rules of Court made by the Justices of the High Court (High Court Procedure Act 1903, ss. 32, 33). By Rules of Court as of 9th December, 1910 (Statutory Rules 1910, No. 130), it was ordered that the several Orders, Sections, and Rules of Court in the Schedule to the High Court Procedure Act 1903, as amended from time to time should be numbered consecutively, and printed as so amended. This was done, but since that date there have been further amendments, which are embodied in the following pages.

Interpretation.

2. In this Act, unless the contrary intention appears—

"Suit" includes any action or original proceeding between parties;

"Cause" includes any suit, and also includes criminal proceedings;

"Matter" includes any proceeding in a Court, whether between parties or not, and also any incidental proceeding in a cause or matter;

"Plaintiff" includes any person seeking any relief against any other person by any form of proceeding in a Court;

"Defendant" includes any person against whom any relief is sought in a matter, or who is required to attend the proceedings in a matter as a party thereto;

"Justice" in the expressions "Court or Justice" or "Court or a Justice" means a Justice of the High Court sitting in Chambers;

"The Chief Justice" includes any Justice upon whom the powers and duties of the Chief Justice devolve for the time being;

"Judgment" includes any judgment decree order or sentence;

"Full Court" means two or more Justices of the High Court sitting together;

"Appeal" includes an application for a new trial and any proceeding to review or call in question the proceedings decision or jurisdication of any Court or Judge.

PART II.—PROCEDURE OF THE HIGH COURT.

Seals.

Seals.

3.—(1) The High Court shall have and use as occasion requires a Seal, having inscribed thereon the words "The Seal of the High Court of Australia" (*a*). Such seal shall be kept at the Principal Registry, in such custody as the Chief Justice directs.

(2) There shall be kept at every District Registry, in such custody as the Chief Justice directs, a duplicate of the Seal having inscribed thereon the additional word "Registry" with the name of the State prefixed, and also if there are more District Registries than one in the State, such other distinctive word as the Chief Justice directs.

(3) There shall also be kept and used at the Principal Registry and at the several District Registries such other seals as are required for the business of the Court. Such seals shall be in such form and shall be kept in such custody as the Chief Justice directs.

(4) All documents and all exemplifications and copies thereof purporting to be sealed with any such seal shall in all parts of the Commonwealth be receivable in evidence without further proof of the seal.

(*a*) As to use of Seals, see s. 4, *infra*.
As to use of Great Seal, see Order LVII., r. 1.
As to keeping an Office Seal at every Registry; see Order LVII., r. 2.

Use of seals. U.S. 911.

4.—(1) All writs commissions and process issued from the High Court shall be in the name of the King, and shall be under the Seal of the Court, or such other seal (*a*) as is prescribed by Rules of Court, and shall be signed by a Registrar or other proper officer. (*b*)

(2) They shall be tested in the name of the Chief Justice, or when the office of Chief Justice is vacant in the name of the senior Justice.

(*a*) As to the use of an Office Seal; see Order LVII., r. 2.
As to sealing summons in a Chamber application; see Order XLVI., r. 2.
(*b*) As to a Registrar's Clerk signing writs and other documents; see Order LVII., r. 3.

Date of Process. U.S. 912.

5. All writs and process issued from the High Court or any other Court exercising federal jurisdiction shall be dated (*a*) as of the day on which they are issued.

(*a*) When the writ or other process has been signed by the Registrar, or his Clerk, and is sealed with the proper seal, it is thereupon deemed to be issued; see Order LVII., r. 3.

District Registries.

Proceedings in District Registries. *Jud. Act* 1873, sec. 64.

6.—(1) Subject to this Act and to Rules of Court, writs of summons for the commencement of causes in the High Court may be issued in any Registry, and every Registrar shall issue such writs (*a*) when required, and unless an order to the contrary is made by the High Court or a Justice all such further proceedings as may and ought to be taken by the respective parties to the cause, down to and including final judgment and execution, may be taken and recorded in the District Registry in which the cause is pending.

English Rules, O. 12, rr 5-7.

(2) Provided that if a defendant against whom a writ is issued in a District Registry neither resides nor carries on business in the State in which the Registry is situated, he may appear (*b*) either at that Registry or at the Principal Registry.

(3) If any defendant appears at the Principal Registry the cause shall, subject to the power of transfer, proceed in that Registry, and the proceedings in the cause shall be transmitted thereto by the District Registrar in the manner directed by the next following section.

(*a*) Writs of summons for the commencement of causes should notify the option the defendant has as to entering an appearance; see Order V., r. 11.

(*b*) As to appearance generally; see Order X.

As to times for appearing; see Order V., r. 14.

Transfer of causes from one Registry to another.

Ib. s. 65.

7.—(1) Any party to a cause in the High Court may at any time apply to the Court or a Justice for an order that the cause be transferred from the Registry in which it is pending, if that is not the Principal Registry, to the Principal Registry or some other Registry, or from the Principal Registry to a District Registry, and the Court or Justice may in his discretion make an order (*a*) accordingly.

(2) Thereupon the proceedings and such original documents (if any) as are filed in the Registry in which the cause is pending shall be transmitted by the Registrar of that Registry to the Registry to which the cause is ordered to be transferred, and the cause shall thenceforth proceed in that Registry in the same manner as

if it had been there originally commenced, and may thereafter be again transferred in like manner to any other Registry.

(*a*) Where a case has been called on in one State and transferred to another for argument by order of the Court, and there argued by counsel originally briefed, the Registrar ought, on the taxation of the costs, to allow such sums for counsel's fees as will be reasonable, taking into consideration the distance travelled or the length of time counsel are compelled to be absent from their own State. Where such counsel are briefed in more than one case to be heard at the same sitting, that fact should be taken into consideration: *The Commissioner of Income Tax* (*Q.*) v. *Bank of New South Wales* (18 C.L.R. 207 [1914]).

Temporary transfer.

8.—(1) When any party to a cause desires to make an application therein to the Court or a Justice, and no Justice of the High Court is present in the place where the Registry in which the cause is pending is situated, the party may lodge with the Registrar of that Registry a request that the cause be transferred (*a*), for the purpose of the application only, to some other Registry at a place where a Justice is present or is appointed to sit, and the cause shall thereupon without further order be transferred accordingly.

(2) The [*District*]* Registrar shall thereupon transmit the request to such other Registry together with such documents as are necessary for the purpose of the application.

(3) The application may then be heard and disposed of at such other Registry, and as soon as it has been disposed of the cause shall without further order be retransferred to the first-mentioned [*District*]* Registry, and all documents relating to it shall be retransmitted to that Registry.

(4) No fee shall be payable in respect of any such transfer or retransfer.

(5) In any of the cases mentioned in this section, if the application is to be made upon notice to any person, the notice may be given of the application to be made before the Court or a Justice at the Registry to which the cause is transferred, on a day to be fixed by the [*District*]* Registrar of the first-mentioned Registry.

* This Section was amended by Act No. 13, s. 3, 1903, which provided "that Sub-sections (2), (3) and (5) of Section 8 and Sections 9, 10, 11 should be amended by omitting the word 'District' wherever it occurs therein."

(*a*) Applications for increase of amount of security under s. 36 of the High Court Procedure Act must be made with expedition, whether there is a Justice of the High Court sitting in the State where the appeal is to be heard or not.

On the 29th December, 1903, the plaintiff filed notice of intention to appeal to the High Court from decisions of the Supreme Court of New South Wales, and deposited £50 as security for the due prosecution of the appeal. On the 4th February the defendants in each case had notice of plaintiff's appeal, and on the 8th March took out a summons for increased security under s. 36 of this Act. There was no Justice of the High Court sitting in Sydney until 14th March, but in the interval Justices of the High Court had been sitting in Hobart and Melbourne.

HELD (*per Griffith*, C. J.) that the applications were made too late, and that the applicants should have proceeded under s. 8, by taking out a summons in Sydney as early as possible, and having the case transferred, for the purpose of hearing the summons, to Hobart or Melbourne: *McLaughlin* v. *Daily Telegraph Newspaper Co., Ltd.*; *McLaughlin* v. *Vale of Clwyd Coal Mining Co., Ltd.* (1 C.L.R. 143 [1904]).

Transmission of documents by telegraph.

Qd. Insolvency Act of 1874.

9.—(1) In any such case as mentioned in the last preceding section, any party desiring to make an immediate application to the High Court or a Justice may, instead of requesting that the cause be transferred to such other Registry, require the [*District*]* Registrar to transmit by telegraph to such other Registry the contents of all such documents filed in the first-mentioned [*District*]* Registry as are necessary for the purpose of the application, and the [*District*]* Registrar shall, on payment by such party of the expense of transmission, transmit them accordingly.

(2) The copy so received by telegraph shall be filed in such other Registry, and shall be receivable in evidence for the purpose of the application to the same extent as the original documents would be admissible.

(3) If the application is to be made upon notice to any person, the notice shall state that the documents will be transmitted by telegraph to such other Registry.

(4) If any person to whom notice is given requires any other documents to be transmitted by telegraph to such other Registry, they shall be transmitted and shall be receivable in evidence in like manner.

(5) Evidence of service of the notice may also be so transmitted.

* This Section was amended by Act No. 13, s. 3, 1903, which provided "that Sub-sections (2), (3) and (5) of Section 8 and Sections 9, 10, 11, should be amended by omitting the word 'District' wherever it occurs therein."

Orders may be sent by telegraph

10.—When in any of the cases mentioned in the two last preceding sections an order has been made by the Court or a Justice at a Registry other than that in which the cause is pending, the Registrar of that Registry shall at the request and expense of either party and without payment of any further fee inform the [*District*]* Registrar of the first-mentioned Registry by telegraph of the effect of the order, and thereupon and without waiting for receipt of the order full effect shall be given to the order.

* This Section was amended by Act No. 13, s. 3, 1903, which provided "that Sub-sections (2), (3) and (5) of Section 8 and Sections 9, 10, 11 should be amended by omitting the word 'District' wherever it occurs therein."

Précis of evidence.

11. In any of the cases aforesaid a [*District*]* Registrar may, by consent of the parties, instead of transmitting by telegraph the full contents of any document transmit a summary thereof certified by him to be complete and correct, and the summary may be received and acted upon by the Court or Justice as if it were a copy of the original document.

* This Section was amended by Act No. 13, s. 3, 1903, which provided "that Sub-sections (2), (3) and (5) of Section 8 and Sections 9, 10, 11, should be amended by omitting the word 'District' wherever it occurs therein.

Trial of Issues.

Trial without jury. U.S. 689.

12. In every suit in the High Court, unless the Court or a Justice otherwise orders, the trial (*a*) shall be by a Justice without a jury.

(*a*) Every trial of an issue of fact with a jury shall be held before a single Justice unless it is specially ordered to be held before two or more Justices; see Order XXXIII., r. 5, as to procedure; see Order XXXIII., r. 5.

Power of court to direct trial of issues. Qd. S.C. Act, s. 61.

13. The High Court or a Justice may, in any suit in which the ends of justice appear to render that mode of inquiry expedient, direct the trial with a jury of the suit or any issue of fact, (*a*) and may for that purpose make all such orders and issue all such writs and cause all such proceedings to be had and taken as the Court or Justice thinks necessary; and upon the finding of the jury the Court or Justice may give such decision and pronounce such judgment as the case requires.

(*a*) See Order XXXIII., r. 3.

As to trial of issues of fact without pleading; see Order XXXII., r. 9.

Issue and new trials.
Ib. . 62.

14. In any case in which the High Court or a Justice is authorized to direct the trial of an issue or in which a new trial is granted, the Court or Justice may impose such conditions on the parties respectively and may direct such admissions to be made by them or either of them for the purpose of the trial or new trial as are just ; and in the case of a new trial may grant it either generally or on some particular points only as the Court or Justice thinks fit, and may order that the testimony of any witness examined at the former trial may be read from the Justice's notes instead of his being again examined in open court.

Juries.
U.S. 800.

15.—(1) The laws of each State relating to the qualification of jurors, the preparation of jury lists and jury panels, the summoning, attendance, and impanelling of juries, the number of jurors, the right of challenge, the discharge of juries, the disagreement of jurors, and the remuneration of jurors, for the purposes of the trial of civil matters pending in the Supreme Court of that State, or relating to any other matters concerning jurors after they have been summoned or sworn, shall extend and be applied to civil matters in which a trial is had with a jury in the High Court in that State, so that the lists of jurors shall be deemed to be made as well for the purposes of the High Court as of the Supreme Court of the State.

(2) But the panel of jurors shall be made out and the jurors shall be summoned by officers of the Commonwealth.

(3) Every officer of a State who has the custody of any jury list shall furnish a copy thereof to the proper officer of the Commonwealth on demand and on payment of a reasonable fee.

Trial of Indictable Offences.

Trial of indictable offences.

*15A. The trial by the High Court of indictable offences against the laws of the Commonwealth shall be by a justice with a jury. (a)

* This Section was added by the Act No. 5 of 1915, which provides that it "shall remain in operation during the present war and six months thereafter and no longer."

(a) The High Court has original jurisdiction in trials of indictments for offences against the laws of the Commonwealth. *Quaere*, whether s. 18 of the Judiciary Act 1903-1915, which authorises a Justice of the High Court sitting alone, whether in Court or in Chambers, to reserve any question for the consideration of the Full Court, applies to a Justice sitting in the conduct of a criminal trial : *Rex* v. *Kidman* (20 C.L.R. 425 [1915]).

Juries.

*15B.—(1) The laws of each State relating to the qualification of jurors, the preparation of jury lists and jury panels, the summoning, attendance, and impannelling of juries, the number of jurors, the right of challenge, the discharge of juries, the disagreement of jurors, and the remuneration of jurors, for the purposes of the trial of criminal matters pending in the Supreme Court of that State, or relating to any other matters concerning jurors after they have been summoned or sworn, shall extend and be applied to the trial of indictable offences in the High Court in that State, so that the lists of jurors shall be deemed to be made as well for the purposes of the High Court as of the Supreme Court of the State.

(2) But the panel of jurors shall be made out and the jurors shall be summoned by officers of the Commonwealth.

(3) Every officer of a State who has the custody of any jury list shall furnish a copy thereof to the proper officer of the Commonwealth on demand and on payment of a reasonable fee.

* This Section was added by the Act No. 5 of 1915, which provides that it "shall remain in operation during the present war and six months thereafter and no longer."

Evidence.

Rules of Court for proof of particular facts. Cf. Jud. Act 1894, sec. 3. Vic. No. 1693, sec. 3.

16. The Justices of the High Court or a majority of them may make rules of Court for regulating the means by which particular facts may be proved and the mode in which evidence thereof may be given.

Production of books. U.S. 722.

17. The High Court may in any suit order the parties to produce any books or writings in their possession or power which contain evidence pertinent to any issue in the suit. If a plaintiff fails to comply with the order the Court may dismiss the suit; and if a defendant fails to comply with the order the Court may give judgment against him as by default.

As to discovery and inspection under the Rules of Court; see Order XXIX.

Oaths. U.S. 725.

18.—(1) The High Court may require and administer all necessary oaths. (*a*)

(2) The forms of oaths shall be the same, as nearly as may be, as those which are used in the Supreme Court of the State or part of the Commonwealth in which the oath is administered.

(3) Any person who by the law of the State or part of the Commonwealth in which an oath is to be administered is entitled to make an affirmation instead of taking an oath may do so in any cause or matter in the High Court, and shall do so in the form prescribed by that law.

(*a*) As to administering of oaths by a person directed to take the examination of person; see Order XXXIV., r. 11.

Orders and commissions for examination of witnesses.

19. The High Court or a Justice may, in any suit or civil matter pending in the Court and at any stage of the proceedings, order the examination of any person upon oath orally or on interrogatories before the Court or a Justice or before any officer of the Court or other person, and at any place within the Commonwealth ; or may order a commission to be issued to any person either within or beyond the Commonwealth authorizing him to take the testimony on oath of any person orally or on interrogatories ; and may by the same or any subsequent order give any necessary directions touching the time place and manner of any such examination ; and may empower any party to the suit or civil matter to give in evidence in the suit or matter the testimony so taken on such terms (if any) as the Court or Justice directs.

See Practice under Order XXXIV.

Evidence by affidavit.

20.—(1) On the hearing of any matter, not being the trial of a cause, evidence may be given by affidavit (*a*) or orally as the Court or Justice directs.

(2) At the trial of a cause, proof may be given by affidavit of the service of any document incidental to the proceedings in the cause, or of the signature of a party to the cause or his solicitor to any such document.

(3) The High Court or a Justice may at any time for sufficient reason order that any particular facts in issue in a cause may be proved by affidavit at the trial, or that the affidavit of any person may be read at the trial of a cause, on such conditions in either case as are just. But such an order shall not be made if any party to the cause desires in good faith that the proposed witness shall attend at the trial for cross-examination. English rules of 1883. O. 37 R. 1.

(*a*) As to affidavits generally; see Order XXXV.

As to cross examination of a deponent; see Order XXXV., r. 1.

21. Except as hereinbefore provided, or unless in any suit the parties agree to the contrary, testimony at the trial of causes shall be given orally in open court. Evidence at trial to be given orally in open court, except certain cases.

22. The Chief Justice may issue commissions to persons within or beyond the Commonwealth authorizing them to administer oaths and take affirmations for the purposes of the High Court and proceedings therein. Commissions for taking oaths.

As to Fees payable to Commissioners, see Scale of Fees; sub-title "To be taken by Commissioners for affidavits."

Defects and Errors.

23. The High Court or a Justice may at any time, and on such terms as are just, amend any defect or error in any proceedings in the Court; and all necessary amendments (*a*) shall be made for the purpose of determining the real questions in controversy or otherwise depending on the proceedings. Amendment.

(*a*) As to amendment generally; see Order XXVII.

24.—(1) No proceedings in the High Court shall be invalidated by any formal defect or by any irregularity (*a*) unless the Court is of opinion that substantial injustice has been caused thereby and that the injustice cannot be remedied by an order of the Court. Formal defects to be amended.

(2) The Court or a Justice may make an order declaring that any proceeding is valid notwithstanding any such defect or irregularity.

(*a*) Non-compliance with any rule of Court, or any rule of practice, not to render proceedings void, unless the Court or a Justice so directs; see Order LVII., r. 6.

As to applications to set proceedings aside for irregularity; see Order LVII., r. 7.

Change of Venue. (*a*)

Change of venue.

25. The High Court or a Justice may, at any stage of any suit pending in the Court, direct that the trial shall be had or continued at some particular place to be specified in the order, subject to such conditions (if any) as the Court or Justice imposes.

(*a*) The plaintiff may, on the indorsement of his writ or statement of claim, name the place of trial, which place must be within the State in which the cause or action arose, and the action shall, unless the Court or a Justice otherwise orders, be tried in the place so named. When no place of trial is named, the place shall, unless the Court or a Justice otherwise orders, be the place in which the Registry from which the writ was issued is situated; see Order XXXIII., r. 1.

Judgment and Execution.

Enforcement of judgments of the High Court.
U.S. 916.

26. Every person in whose favour a judgment of the High Court is given shall be entitled to the same remedies for enforcing it by execution or otherwise—

(*a*) Against the property of the person against whom it is given ; and

(*b*) Subject to limitations which may be prescribed by any Rules of Court, against the person against whom it is given, (*a*)

as are allowed, by the laws of the State in which such property is situated or such person is resident, as the case may be, to persons in whose favour a judgment of the Supreme Court of the State is given in like cases.

(*a*) An order for payment of the costs of an appeal is an order for the payment of money to some person within the meaning of Rules of the High Court, Part I., Order XLI., r. 1 (1903, Order XXXV., r. 1). Therefore, an order of the High Court for payment of the costs of an appeal from the Supreme Court of a State will not be enforced by attachment. Nor will the payment of the costs of an appeal in which a new trial is ordered be made a condition precedent to the new trial : *Lysaght Bros. & Co., Ltd.* v. *Falk*, No. 2, (2 C.L.R. 443 [1905]).

Interpleader.

27. When any claim is made to property taken in execution upon process issued out of the High Court, the Marshal or his Deputy may take in the Supreme Court of the State in which the property is situated the same proceedings by way of interpleader as if the process had been issued out of that Supreme Court ; and that Supreme Court and the Judges thereof shall have jurisdiction to entertain and determine the matter.

28. A seizure or attachment of property in execution upon process issued out of the High Court shall become inoperative when any event occurs by which, according to the laws of the State in which the property is situated, the seizure or attachment would become inoperative if made upon like process issued out of the Supreme Court of that State.

Discharge of property taken in execution.
U.S. 933.

Receivers and Managers.

29. When in any cause pending in the High Court a receiver (*a*) or manager appointed by the Court is in possession of any property, the receiver or manager shall manage and deal with the property according to the requirements of the laws of the State or part of the Commonwealth in which the property is situated, in the same manner in which the owner or possessor thereof would be bound to do if in possession thereof.

Duty of receiver and manager.
U.S. A.D. 1888. Ch. 866, s. 2.

(*a*) As to practice with respect to appointment of receivers; see Order XLIII.

30. A receiver or manager of any property appointed by the High Court may, without the previous leave of the Court, be sued in respect of any act or transaction of his in carrying on the business connected with the property.

Liability and protection of receivers and managers.
Ch. 866, s. 3.

Actions by and against the Marshal.

31.—(1) When the Marshal is a party to a cause in the High Court, all writs summonses orders warrants precepts process and commands in the cause which should in ordinary course be directed to him shall be directed to such disinterested person as the Court or a Justice appoints; and the person so appointed may execute and return them.

Action by or against Marshal.
U.S. 922.

(2) When a deputy of the Marshal is a party to a cause in the High Court, any writs summonses orders precepts process and commands in the cause which should in ordinary course be directed to him shall be directed to such person as the Marshal appoints; and the person so appointed may execute and return them.

Rules of Court.

Rules of Court. Schedule.

32. The Rules in the Schedule to this Act shall, as to all matters to which they extend, regulate the proceedings in the High Court. But those Rules may be annulled or altered by the authority by which new Rules of Court may be made under this Act.

New Rules.

33.—(1) The Justices of the High Court or a majority of them may make Rules of Court not inconsistent with this Act for carrying this Act into effect.

(2) The authority of the Justices of the High Court to make Rules of Court extends to making by way of re-enactment or otherwise any such Rules as are set forth in the Schedule to this Act with or without amendment.

To be laid before the Parliament.

34. Every Rule of Court made in pursuance of the last preceding section shall be laid before both Houses of the Parliament within forty days next after it is made if the Parliament is then sitting, or if the Parliament is not then sitting then within forty days after the next meeting of the Parliament ; and if an Address is presented to the Governor-General by either House of the Parliament within the next subsequent forty sitting days of that House praying that any such Rule may be annulled the Governor-General may thereupon annul it ; and the Rule so annulled shall thenceforth become void and of no effect but without prejudice to the validity of any proceedings which have in the meantime been taken under it.

England. Qd. Va.

Part III.—Appeals to the High Court.

Security.

Security.

35.—(1) In any appeal to the High Court, security (*a*) shall not except under an order of the High Court be required to be given by a party appellant, except in the case of appeals from a judgment of the Supreme Court of a State (*b*) or some other Court of a State from which at the establishment of the Commonwealth an appeal lay to the Queen in Council.

(2) In the case of such last-mentioned appeals, security shall be given by the party appellant in such manner as is prescribed by Rules of Court for the prosecution of the appeal without delay, and for the payment of all such costs as may be awarded by the High Court to the party respondent.

(3) The amount of security shall unless otherwise ordered by the High Court or a Justice be Fifty pounds. (*c*)

(*a*) As to security in general; see Order XXVIII., r. 1, *et seq.*

As to security for costs; see Order XXVIII., r. 9, *et seq.*

As to security for costs of appeal from the Supreme Court of a State; see Rules of the High Court, Part II., s. 3, r. 12.

(*b*) Compliance with the provisions of the rules in Section 3 of Part 2 of the Rules of the High Court as to giving security on instituting an appeal from the Supreme Court of a State is a condition precedent to the coming into existence of a cause in the appellate jurisdiction of the High Court: *Delph Singh* v. *Karbowsky* (18 C.L.R. 197 [1914]).

(*c*) Applications for increase of amount of Security must be made with expedition, whether there is a Justice of the High Court sitting in the State where the appeal is to be heard or not: *McLaughlin* v. *Daily Telegraph Co., Ltd.*; *McLaughlin* v. *Vale of Clwydd Coal Mining Co., Ltd.* (1 C.L.R. 143 [1904]).

Amount of security.

36. The High Court or a Justice may in any case reduce or increase the amount of security to be given by an appellant (*a*), and in the case of increase may order that unless the additional security is given within a time to be limited by the order the appeal shall be dismissed.

(*a*) See note (*c*) to Section 35, *supra*.

McLaughlin v. *Daily Telegraph Newspaper Co., Ltd.*; *McLaughlin* v. *Vale of Clwydd Coal Mining Co., Ltd.* (1 C.L.R. 143 [1904]).

Procedure.

Institution of appeals.

37. Appeals to the High Court shall be instituted within such time and in such manner (*a*) as is prescribed by Rules of Court. (*b*)

(*a*) As to time and manner of instituting appeals; see High Court Rules, Part 2, *infra*.

(*b*) See note (*b*) to Section 35, *supra*: *Delph Singh* v. *Karbowsky* (18 C.L.R. 197 [1914]).

Stay of proceedings.

38. When an appeal has been instituted, the High Court or a Justice or the Court or Judge appealed from may order a stay of all or any proceedings (*a*) under the judgment appealed from. (*b*)

(*a*) As to general authority to stay proceedings at any time after the institution of any cause or matter; see Order XLIV., r. 1.

As to appeal from a Justice of the High Court, or from a Judge of the Supreme Court of a State exercising Federal jurisdiction, or motion for a new trial not operating to stay proceedings unless ordered; see Rules of the High Court, Part 2, s. 1, r. 26, and Part 2, s. 2, r. 1.

As to stay of proceedings when an appeal is instituted from a Supreme Court of a State, see Rules of the High Court, Part 2, s. 3, r. 22.

(*b*) In *Ex Parte Quaine, in re McKay* ([1912] 29 W.N. 176 (N.S.W.)), the Supreme Court of New South Wales granted a stay of execution for the recovery of costs, on an affidavit that an application was about to be made to the High Court for special leave to appeal from the order under which the costs were payable.

Death of party to an appeal.
U.S. 1875, s. 9.

39.—(1) When either party to a judgment from which an appeal lies to the High Court dies before the time allowed for instituting an appeal has expired, it shall not be necessary to revive the cause or matter by any formal proceedings.

(2) If the personal representative of the deceased party desires to appeal, he may file in the Court in which the cause or matter is pending a duly certified copy of the instrument by which he is appointed, and thereupon may institute an appeal in the same manner as the party whom he represents might have done.

(3) In the case of the death of the party in whose favour the judgment is given or made, notice of appeal may be given to his personal representative, or, if there is no such representative, to such person as the High Court or a Justice directs.

The Rules

of the

High Court of Australia

(Schedule to the High Court Procedure Act)

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PART I.—ORIGINAL JURISDICTION

ORDER I.

Commencement of Civil Proceedings.

Mode of commencement.

1. Causes and matters in the High Court may be commenced by writ of summons, motion, originating summons, or order to show cause.

Causes and matters which are by any Act or Rules of Court required or authorized to be commenced by motion, whether on notice or *ex parte*, or by originating summons, or order to show cause, or in any other specified manner, shall or may, respectively, be so commenced.

When by any Act or Rules of Court any person is authorized to make any application to the Court or a Justice with respect to any matter which is not already the subject-matter of a pending cause or matter, and no other mode of making the application is prescribed by the Act or Rules, the application, if made to the Court, shall be made by motion, and, if made to a Justice, shall be made by originating summons.

Except as aforesaid, and except as otherwise provided by any Act, all causes in the Court shall be commenced by writ of summons.

Causes commenced by writ of summons are called actions.

The document by which a cause or matter is commenced is called an " originating proceeding."

As to writs of Summons; see Order V, *et seq.*

As to applications for writs of *Certiorari*, Mandamus or prohibition, or for leave to exhibit informations of *Quo Warranto*, or for relief of like nature to Mandamus or *Quo Warranto*; see Order XLVII., r. 1.

Titles of proceedings.

2. Every proceeding in the Court shall be entitled " In the High Court of Australia." If the cause is pending in a District Registry, the word " Registry " shall be added with the name of the State prefixed, and, if there is more than one District Registry in the State, the name of the place at which the Registry is situated shall also be added.

As to entitling of affidavits; see Order XXXV. r. 2. of proceedings on application for *certiorari*, mandamus or prohibition, or for leave to exhibit informations of *quo warranto*; see Order XLVII. rr. 3, 4.

As to title of actions; see Form No. 1 (Appendix).

As to actions for condemnation of property, or recovery of any penalty, or forfeiture, to be in the name of the King; see Order V. r. 8.

Address of suitor and of his solicitor to be indorsed on originating proceeding.

Address for service.

3. The solicitor of a party suing by a solicitor shall indorse upon the originating proceeding, and upon every notice in lieu of service of an originating proceeding, the address of the plaintiff, and also his own name or firm and place of business, and also, if his place of business is more than one mile from the Registry in which the cause or matter is commenced, a place to be called his address for service, which shall not be more than one mile from the Registry, where any proceedings in the cause or matter may be left for him. And, if the solicitor is only agent of another solicitor, he shall add to his own name or firm and place of business the name or firm and place of business of the principal solicitor.

Name of principal and agent.

Party suing in person to indorse address for service.

4. A party suing in person shall indorse upon the originating proceeding, and upon every notice in lieu of service of an originating proceeding, his place of residence and occupation, and also, if his place of residence is more than one mile from the Registry in which the cause or matter is commenced, another proper place to be called his address for service, which shall not be more than one mile from the Registry, where any proceedings in the cause or matter may be left for him.

As to indorsement of address for service by solicitor or party suing, see r. 3 supra.

ORDER II.

Parties to Actions.

1. *Generally.*

Persons claiming jointly severally or in the alternative may be plaintiffs.

1. All persons in whom any right to relief in respect of or arising out of the same transaction or series of transactions is alleged to exist, whether jointly, severally, or in the alternative, may be joined in an action as plaintiffs, provided that the case is such that if such persons brought separate actions some common question of law or fact would arise.

Provided that the Court or a Justice may, in any case in which separate and distinct questions arise, order that separate pleadings be delivered, or separate trials had, or may make such other order as is just.

When several plaintiffs are joined in an action, judgment may be given for such of them as are entitled to relief for such relief as they are entitled to, without any amendment. But the defendant shall be entitled to his costs occasioned by joining as a plaintiff any person who is not entitled to relief, unless the Court or a Justice in disposing of the costs otherwise directs.

As to adding or striking out parties; see rr., 2, 9, 10.

As to change of parties by marriage, death or insolvency; see Order XII.

As to firms and persons carrying on business in names other than their own; see Order XLII.

As to costs; see Order LIV.

Action in name of wrong plaintiff.

2. When an action has been commenced in the name of the wrong person as plaintiff, or it is doubtful whether an action has been commenced in the name of the right plaintiff, the Court or a Justice may order that any other person be substituted or added as plaintiff upon such terms as are just.

Cross-claim: misjoinder.

3. When any person has been improperly or unnecessarily joined as a plaintiff in an action, the defendant shall be entitled to the same relief by way of cross-claim or set-off against the other plaintiffs or any of them, as if that person had not been so joined, notwithstanding such misjoinder or any proceeding consequent thereon.

As to cross actions, see Orders XVI. r. 5, XVII., r. 3, XX., r. 9.

Persons to be joined as defendants.

4. All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative. And judgment may be given against such of the defendants as are found to be liable, according to their respective liabilities, without any amendment.

As to striking our a defendant; see r.r. 9, 10 *infra.*

As to joining defendants under their firm name; see Order XLII.

As to signing judment against one or more defendants in default of appearance, see Order XI., and in default of pleading, Order XXVI.

Defendant need not be interested in all the relief claimed.

5. It shall not be necessary that every defendant shall be interested as to all the relief claimed in the action, or as to every cause of action included in the action; but the Court or a Justice may make such order as is just to prevent any defendant from being embarrassed or put to expense by being required to attend any proceedings in which he has no interest.

Joinder of persons severally or jointly and severally liable.

6. The plaintiff may, at his option, join as parties to the same action all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange and promissory notes.

Plaintiff in doubt as to persons from whom redress is to be sought.

7. When a plaintiff is in doubt as to the person from whom he is entitled to relief, he may join two or more persons as defendants, to the intent that the questions as to which, if any, of the defendants is liable, and as to what relief the plaintiff is entitled to may be determined as between all parties.

Numerous persons.

8. When there are numerous persons having the same interest in the subject-matter of a cause or matter, one or more of such persons may sue, and the Court or a Justice may authorise one or more of such persons to be sued, or may direct that one or more of such persons shall defend, in such cause or matter, on behalf or for the benefit of all persons so interested.

Misjoinder and nonjoinder.

9. The Court shall not refuse to determine a cause or matter by reason only of the misjoinder or nonjoinder of parties, and the Court may in every cause or matter deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.

Striking out and adding parties.

The Court or a Justice may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as appear to the Court or Justice to be just, order that the names of any persons improperly joined, whether as plaintiffs or as defen-

dants, be struck out, or that the names of any persons who ought to have been joined, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter, be added, either as plaintiffs or defendants.

Consent of plaintiff or next friend.

But no person shall be added as a plaintiff suing without a next friend, or as the next friend of a plaintiff under any disability, without his own consent in writing.

As to the time for application to add or strike out a party, see r. 10 (*infra*).
As to service of proceedings on new parties; see r. 11 (*infra*).

Application to strike out.

10. An application to add or strike out or substitute a plaintiff or defendant may be made to the Court or a Justice, at any time before the hearing of the cause, or may be made at the hearing in a summary manner.

As to adding or striking out parties; see rr. 2, 9.

When defendant added.

11. When a defendant is added or substituted, he shall, unless he waives such service, be served with the amended originating proceeding, or with notice in lieu of service, as the case may be, and the proceedings as against him shall, unless otherwise ordered, be deemed to have begun only on such service being effected.

Such service shall, unless otherwise ordered by the Court or a Justice, be effected in the same manner in which original defendants are served.

As to service, see Order VIII., Order LV.

2. *Persons under Disability.*

Infants.

12. An infant may sue or carry on the proceedings in any cause or matter by his next friend, and may appear in any cause or matter by his guardian *ad litem.*

As to removal and appointment of guardian *ad litem*, see rr. 15,16, *infra*.
As to service of originating proceedings on infant, see Order VIII. r. 4.
As to appearance of person under disability, see Order X. r. 14.
As to costs of Solicitor guardian *ad litem*, see Order LIV. r. 4.
As to staying of proceedings improperly instituted in the name of any person by a next friend, see Order XLIV. r. 3.

Married women.

13. A married woman may sue or defend in her own name, being described as the wife of her husband, naming him.

Lunatics.

14. A person found or declared to be of unsound mind may sue or defend by the committee of his person or estate, as the case may be.

Persons of unsound mind without committees.

A person who is of unsound mind, but has not been so found or declared, and a person so declared, but of whom a committee of his person or estate, as the case may be, has not been appointed, may sue by his next friend, and may defend or intervene by a guardian appointed by a Justice for that purpose.

Next friend.

15. Before the name of any person is used in any cause or matter as next friend of any infant or other party, such person shall sign a written authority to the solicitor for that purpose, and the authority shall be filed in the Registry with the originating proceeding. The authority shall not extend to any other proceeding than that specified in it.

A married woman or a corporation cannot be a next friend or a guardian for the purpose of bringing or defending an action.

As to proceedings by or against infants or married women, see rr. 12, 13, *supra.*

As to stay of proceedings improperly instituted by next friend, see Order XLIV. r. 3.

The fee payable on filing a written authority to use a person's name as next friend is 2/6.

Removal and appointment of next friend and guardian *ad litem.*

16. The Court or a Justice may, for sufficient cause shown, remove a next friend or guardian *ad litem.*

Whenever for any reason there is no next friend or guardian *ad litem* of an infant, the Court or a Justice may appoint a fit person, with his own consent, to be such next friend or guardian.

As to actions by and against infants, see r. 12, *supra.*

Consent of persons under disability to procedure.

17. In any cause or matter to which any infant or person of unsound mind, whether so found or declared or not, or a person under any other disability, is a party, any consent as to the mode of taking evidence or as to any other procedure shall, if given with the sanction of the Court or Justice by the next friend, guardian, committee, or other person acting on behalf of the person under disability, have the same force and effect as if the party were under no disability and had given the consent.

ORDER III.

Proceedings by and against Paupers.

Suing or defending as pauper.

1. Any person may be allowed by the Court or a Justice to sue or defend in any cause or matter as a pauper on proof that he is not worth £25, his wearing apparel and the subject-matter of the cause or matter, if any, only excepted. (*a*)

(a) The High Court has no jurisdiction to allow an appeal to be prosecuted in *forma pauperis* where the appeal has not been duly instituted: *Fisk* v. *Anderson and others,* (19 C.L.R. 518 [1915]).

Case to be laid before counsel.

2. A person desirous of suing as a pauper shall lay a case before a practitioner of the High Court for his opinion whether or not he has reasonable grounds for proceeding.

Affidavit by party or solicitor that case is true.

3. A person shall not be permitted to sue as a pauper unless the case laid before counsel for his opinion, and his opinion thereon, with an affidavit of the party or his solicitor, stating that the case contains a full and true statement of all the material facts to the best of his knowledge and belief, and referring to the case as an exhibit, are produced before the Court or Justice to whom the application is made.

No Court fees payable.

4. A person admitted to sue or defend as a pauper shall not be liable to any Court fees.

As to Court Fees, see Scale of Fees.

Counsel and solicitor may be assigned.

5. When a person is admitted to sue or defend as a pauper, the Court or a Justice may, if necessary, assign a barrister or solicitor, or both, to assist him; and a barrister or solicitor so assigned shall not be at liberty to refuse his assistance unless he satisfies the Court or a Justice that he has some good reason for refusing.

Default in proceeding by pauper.

6. When a person who has been admitted to sue as a pauper neglects to proceed with the cause or matter he may be ordered to pay costs, although he has not been dispaupered; and all further proceedings in the cause or matter may be stayed until payment of any costs so ordered to be paid by him.

As to costs generally, see Order LIV.

Notices, &c., on behalf of pauper, how to be signed.

7. A notice of motion shall not be served or summons issued, nor shall a petition be presented, on behalf of any person admitted to sue or defend as a pauper, except for the discharge of his solicitor unless it is signed by his solicitor.

As to motions in general, see Order XXXVII.
As to service, see Order LV.

Duty of solicitor.

8. It shall be the duty of a solicitor assigned to a person admitted to sue or defend as a pauper to take care that no notice is served, or summons issued, or petition presented, without good cause.

Pauper not to recover costs.

9. A person admitted to sue or defend as a pauper shall not be entitled to recover costs from any other party without the order of the Court or a Justice.

As to costs generally, see Order LIV.

Taxation of costs.

10. Costs ordered to be paid to a person admitted to sue or defend as a pauper shall, unless the Court or a Justice otherwise directs, be taxed as in other cases.

As to review of taxation by a Justice, see Order LIV. r. 15.

ORDER IV.

Partial Relief.

Declaratory judgments and orders.

1. An action shall not be open to objection on the ground that a merely declaratory judgment or order is sought thereby; and the Court may make binding declarations of right in an action properly brought, whether any consequential relief is or could be claimed therein or not. (*a*)

(a) Held by the High Court that notwithstanding the provisions of Part I., Order IV., r. 1, of the Rules of the High Court (Part I., Order III., r. 1, Rules of the High Court, 1903), the High Court will not entertain abstract questions of law or give an opinion as to the power of the Commonwealth to enact certain legislation where the opinion cannot be followed up by an effective order: *Bruce and another* v. *The Commonwealth Trade Marks Label Association and others*, (4 C.L.R. Part 2, 1569, [1907]); (13 A.L.R. 582, [1907]).

ORDER V.

Writs of Summons.

1. Every action shall be commenced by a writ of summons, which shall have indorsed thereon a concise statement of the nature of the claim made, or of the relief or remedy sought in the action. Action to be commenced by writ.

Writ of Summons: Form of, see r. 10, *infra*.
,, ,, General Form, see Appendix Form No. 1.
,, ,, Statement on, when issued from Registry of State in which the defendant neither resides or carries on business, see r. 11, *infra*.
,, ,, Sealing of, see H. C. P. Act, sec. 4.
,, ,, Date of, see H.C.P. Act, sec. 5.
,, ,, Amendment of, see r. 2, *infra*.
,, ,, Duration of, see Order VII. r. 1.
Concurrent Writs, see Order V. r. 2.
Renewal of Writs, see Order VII. rr. 1 & 2.
Loss of Writ, see Order VII. r. 3.
Service of Writ, see Order VIII. and Order IX.
Appearance to Writ, see Order X.
Issue of Writ, see Order LVII. r. 3.
Leaving copy on issue of Writ, see r. 15, *infra*.
Indorsement of place of trial, see Order XXXIII. r. 1.
Commencement of other Causes and Matters, see Order I. r. 1.
The fee payable on sealing a writ of summons for commencement of an action is 10/-.

2. The indorsement required by the last preceding rule shall not be invalid by reason of failure to set forth the precise ground of complaint, or the precise remedy or relief to which the plaintiff considers himself entitled. Amendment allowed.

The plaintiff may, by leave of the Court or a Justice, amend the indorsement so as to extend it to any other cause of action or any additional remedy or relief.

As to amendment, see H. C. P. Act, secs. 23 & 24, and Order XXVII.
As to amendment of Writ of Summons, see Order XXVII. r. 1.
A plaintiff may in his statement of claim alter, modify, or extend his claim without amending the indorsement on the writ, see Order XIX. r. 1, and Order XXXIII. r. 1.
The fee payable on sealing an amended writ of summons is 5/-.

3. If the plaintiff sues, or the defendant or any of the defendants is sued, in a representative capacity, the indorsement shall show in what capacity the plaintiff or defendant sues or is sued. Indorsement to show representative capacity.

4. In any action in which the plaintiff seeks to recover a debt or liquidated demand in money payable by the defendant, with or without interest, the writ of summons may be specially indorsed with particulars of the nature of his claim, and of the amount, if any, sought to be recovered. Special indorsement or liquidated claims.

5. When the plaintiff's claim is for a debt or liquidated demand only, with or without interest, the indorsement, besides stating the nature of the claim, shall state the amount claimed for debt, or in respect of such demand, and for costs, respectively, and shall further Further indorsement in case of liquidated claim

state that upon payment thereof within the time allowed for appearance, further proceedings will be stayed. The defendant may, notwithstanding such payment, have the costs taxed, and if more than one-sixth be disallowed the plaintiff's solicitor shall pay the costs of taxation.

The plaintiff may claim for costs under this Rule the following amounts, exclusive of mileage :—For costs on issuing the summons, the sum of £4 14s. 6d., and a further sum of £4 14s. 6d., for costs of judgment in default of appearance ; and when judgment is so obtained such costs shall not be subject to taxation.

Ordinary account.

6. In an action in which the plaintiff desires to have an account taken in the first instance, the writ of summons shall be specially indorsed with a claim that such account be taken.

Kinds of actions.

7. Actions shall be of two kinds, actions *in personam* and actions *in rem*.

Crown actions.

8. Actions for condemnation of any property, or for recovery of any pecuniary forfeiture or penalty, shall be instituted in the name of the King.

Title of actions.

9. The title of actions shall be as set forth in the Appendix.

Form of writ.

10. A writ of summons for the commencement of an action shall be in such one of the forms in the Appendix as is applicable, with such variations as circumstances require.

Writ issued from District Registry.

11. When a writ is issued from a District Registry, and any defendant neither resides nor carries on business in the State in which the Registry is situated, there shall be a statement upon the face of the writ that such defendant may, at his option, cause an appearance to be entered either at the District Registry or at the Principal Registry, or to the like effect.

As to issue of writs from District Registry and appearance, see H. C. P. Act, sec. 6.

Writ for service out of the jurisdiction.

12. A writ of summons to be served out of the jurisdiction, or of which notice is to be given out of the jurisdiction, may be issued without leave.

As to issue of concurrent Writs for service without and within the jurisdiction, see Order VI. r. 2.

As to service out of jurisdiction, see Order IX. r. 1.

Form of Writ for service out of jurisdiction, see Appendix, Form No. 3.

Form for writ and notice for service out of the jurisdiction.

13. Notice of a writ to be given out of the jurisdiction shall be in the form in the Appendix with such variations as circumstances require.

Notice to be served in lieu of Form No. 3, see Appendix Form No. 4.

14. The time to be limited in the writ of summons for the appearance of any defendant shall be the time next hereinafter specified, according to the place of service, that is to say :— Time for appearance to be limited by writ.

When the place of Service is—	Time for Appearance.
(1) Within the Commonwealth—	
If the writ is to be served within the State in which the Registry from which it is issued is situated ..	Fourteen days
If the writ is to be served within a State adjacent to the State in which the Registry from which it is issued is situated	Twenty-one days
In any other case	Twenty-eight days
Provided that if the writ is to be served in the State of Queensland, or the State of South Australia, or the State of Western Australia, at a place distant more than 600 miles from the Registry from which the writ is issued an additional time shall be allowed of	Seven days
(2) Beyond the Commonwealth—	
If the writ is to be served in New Zealand ..	Forty-two days
If the writ is to be served in British New Guinea or Fiji	Three months
If the writ is to be served elsewhere	Six months

For the purposes of this rule the State of Tasmania is to be deemed to be adjacent to the States of New South Wales, South Australia, and Victoria, and the State of Queensland is not to be deemed adjacent to the State of South Australia.

Distances are to be reckoned according to the nearest route ordinarily used in travelling.

As to appearance, see Order X.

As to computation of time, see Order LIII.

15. The plaintiff, or his solicitor, shall, on presenting any writ of summons for issue, leave with the officer a copy of the writ, and of all the indorsements thereon, and the copy shall be signed by or for the solicitor leaving it, or by the plaintiff himself if he sues in person. No praecipe shall be required. Copy to be left.

As to issue of Writ, see Order LVII. r. 3.

ORDER VI.

Concurrent Writs.

1. The plaintiff in any action may, at the time of, or at any time during twelve months after, the issuing of the original writ of summons, issue one or more concurrent writs. Each concurrent writ shall be dated as of the same day as the original writ, and shall be marked with a seal bearing the word " Concurrent," and the date of Concurrent writ, how issued.

issuing the concurrent writ ; and such seal shall be impressed upon the writ by the proper officer : Provided always that any such concurrent writs shall only be in force for the period during which the original writ in the action is in force.

Original Writs remain in force 12 months but may be renewed from time to time, see Order VII. r. 1.

The fee payable on sealing a concurrent writ for the commencement of an action is 2/6.

Concurrent writs for service, within and without the jurisdiction.

2. A writ of summons to be served out of the jurisdiction, or of which notice is to be given out of the jurisdiction, may be issued and marked as a concurrent writ with a writ to be served within the jurisdiction ; and a writ of summons to be served within the jurisdiction may be issued and marked as a concurrent writ with a writ to be served out of the jurisdiction, or of which notice is to be given out of the jurisdiction.

As to service of Writ out of jurisdiction, see Order IX.

ORDER VII.

Renewal of Writs : Lost Writs.

Original writ in force for twelve months, but may be renewed.

1. Original writs of summons shall be in force for twelve months from the date thereof, including the day of that date, and no longer ; but if any defendant therein named has not been served within that time, the plaintiff may, before the expiration of the twelve months, apply to the Court or a Justice for leave to renew the writ ; and the Court or Justice, if satisfied that reasonable efforts have been made to serve such defendant, or for other good reason, may order that the original or concurrent writ of summons be renewed for six months from the date of renewal, including the day of that date, and so from time to time during the currency of the renewed writ.

The writ shall be renewed by being marked with the word " Renewed," and with a seal bearing the date of the day, month, and year of the renewal ; which seal shall be provided and kept for that purpose at the Registry, and shall be impressed upon the writ by the proper officer, upon delivery to him by the plaintiff or his solicitor or a praecipe to that effect.

A writ of summons so renewed shall remain in force and be available to prevent the operation of any Act whereby the time for the commencement of the action is limited, and for all other purposes, from the date of the issuing of the original writ.

As to concurrent writs, see Order VI.

The fee payable on sealing a renewed summons is 5/-.

Evidence of renewal.

2. The production of a writ of summons purporting to be marked with the seal of the Court, showing it to have been renewed in manner aforesaid, shall be sufficient evidence of its having been so renewed, and of the commencement of the action as of the date of the original writ, for all purposes.

As to date of Writ, see H. C. P. Act, secs. 4, 5.

Lost writ.

3. When a writ of which the production is necessary has been lost, the Court or a Justice, upon production of a copy thereof, and upon being satisfied of the loss, and of the correctness of the copy, may order that the copy shall be sealed and served, or otherwise made use of, in lieu of the original writ.

As to sealing of Writs, see H.C.P. Act, sec. 4 (1), (2).
As to Service, see Order VIII.

ORDER VIII.

Service of Originating Proceedings.

1. *Generally.*

Personal service.

1. Unless otherwise prescribed or allowed, service of an originating proceeding shall be made personally. But personal service shall not be required when the party to be served, by his solicitor, undertakes in writing to accept service, and enters an appearance.

Definition of "originating proceeding," see Order I. r. 1.
As to substituted service, see rr. 8, 9, *infra*.
As to service on partners and firms, see Order XLII. rr. 5, 6.
As to service out of jurisdiction, see Order IX.
As to time of day for service, see Order LIII. r. 7.
As to service generally, see Order LV.

Personal service, how effected.

2. Personal service shall be effected, in the case of a writ of summons, originating summons, or other document authenticated by signature or seal, by delivering to and leaving with, or offering to deliver to and leave with, the person to be served, a copy of the writ, summons, or other document, in such a condition as to be open for examination, and at the same time showing him the original writ, summons, or other document, if he requires it; and, in the case of any other document, by delivering or offering to deliver it to the person to be served in such a condition as to be open for examination.

As to application made by originating summons, see Order I., r. 1.
As to personal service of other documents, see Order LV., r. 1.
As to substituted service, see rr. 8, 9, *infra*, and Order LV., r. 2.
As to service on partners and firms, see Order XLII., rr. 5,6.

2. *On Particular Defendants.*

Husband and wife.

3. When a husband and his wife are both parties to a cause or matter, they shall both be served unless the Court or a Justice otherwise orders.

As to actions by and against married women, see Order II., r. 13.

Infants.

4. When an infant is a party to a cause or matter, service on his father or guardian, or, if he has none, then upon the person with whom the infant resides or under whose care he is, shall, unless the Court or a Justice otherwise orders, be deemed good service on the infant; but the Court or Justice may order that service made or to be made on the infant himself shall be deemed good service.

As to actions by and against infants, see Order II., rr. 12, 15, 17.

Lunatics.

5. When a person of unsound mind is a party to a cause or matter, service on the committee, if any, of his person or estate, as the case may be, or, if he has not been found or declared to be of unsound mind, or if he has been so declared but a committee of his person or estate, as the case may be, has not been appointed, service on the person with whom he resides or under whose care he is, shall, unless the Court or a Justice otherwise orders, be deemed good service on such party.

As to actions by and against lunatics, see Order II., rr. 12, 17.

3. *On Corporations and other Bodies.*

Service on corporations, &c.,

6. In the absence of any statutory provision regulating service of process, an originating proceeding to be served on a corporation aggregate, whether incorporated under the laws of the Commonwealth or of a State or not, may be served on the mayor or other head officer, or on the town clerk, manager, or other chief officer, of the corporation within the Commonwealth ; and when by any Act provision is made for service of any legal process upon any corporation, or upon any society or fellowship, or any body or number of persons, whether corporate or unincorporate, an originating proceeding may be served in the manner so provided.

4. *Indorsement of Date of Service.*

Indorsement to be made on writ within three days.

7. The person serving a writ of summons shall, within three days after the service, indorse on the writ the day of the month and week of the service thereof ; otherwise the plaintiff shall not, without leave of the Court or a Justice, be at liberty, in case of default of appearance, to proceed as upon default ; and every affidavit of service of the writ shall mention the day on which such indorsement was made.

As to proceedings in default of appearance, see Order XI.
As to method of computing time limited by this rule, see Order LIII.

5. *Substituted Service.*

Substituted service may be allowed.

8. If it is made to appear to the Court or a Justice that a party is from any cause unable to effect prompt personal service, or service in any other prescribed manner, of the originating proceeding, or any other proceeding requiring service, the Court or Justice may make such order for substituted service, or for the substitution for service of notice, by advertisement or otherwise, as is just.

As to personal service, see rr. 1, 2, *supra*.
As to evidence required on application, see r. 9, *infra*.
As to service out of jurisdiction, see Order IX.
As to substituted service of other documents, see Order LV., r. 2.

Evidence.

9. Every application to the Court or a Justice for an order for substituted or other service, or for the substitution of notice for service, shall be supported by an affidavit setting forth the grounds upon which the application is made.

As to affidavits generally, see Order XXXV.

ORDER IX.

Service out of the Jurisdiction.

In certain cases service of writ, &c., allowed out of jurisdiction.

1. An originating proceeding, or notice thereof, may be served out of the jurisdiction of the Court in any of the following cases, that is to say :—

(1) When the subject matter of the cause, so far as it concerns the party to be served, is—

(*a*) Land or other property situate within the Commonwealth, with or without rents or profits thereof ; or

(*b*) Any shares or stock of a corporation or joint stock company having its principal place of business within the Commonwealth ; or

(*c*) Any instrument or thing affecting any such land, property, shares, or stock ;

(2) When any contract in respect of which relief is sought in the cause against the party by way of enforcing, rescinding, dissolving, annulling, or otherwise affecting, the contract, or by way of recovering damages or obtaining any other remedy against the party for a breach thereof, was made or entered into within the Commonwealth ;

(3) When the relief sought against the party is in respect of a breach within the Commonwealth of a contract, wherever made ; or

(4) When any act or thing sought to be restrained or recovered or for which damages are sought to be recovered, was done or is to be done or is situate within the Commonwealth.

In the case of an action, the indorsement of claim on the writ of summons shall be in such a form as to show that the subject-matter of the action is within the provisions of this Rule.

Originating Proceeding, definition of, see Order I., r. 1.

As to form of writ for service out of jurisdiction and indorsement thereon, see Appendix, Form No. 3.

A writ for service without the jurisdiction may be issued without leave, see Order I., r. 1.

As to taking evidence out of the jurisdiction, see H.C.P. Act, ss. 19, 22.

As to British subjects residing beyond the Commonwealth.

2. If the party to be served is a British subject, the Court or a Justice, upon being satisfied by affidavit that the subject-matter of the cause is such that, under the provisions of the last preceding Rule, the originating proceeding may be served out of the jurisdiction, and that it was personally served upon a party out of the jurisdiction, or that reasonable efforts were made to effect personal service thereof upon the party and that it came to his knowledge, and either that he wilfully neglects to appear in the cause, or that he is living out of the jurisdiction of the Court in order to defeat and delay the plaintiff, may direct from time to time that the plaintiff or petitioner shall be at liberty to proceed in the cause in such manner and subject to such conditions as the Court or Justice thinks fit.

As to foreigners residing out of the jurisdiction.

3. When the originating proceeding is an instrument under the seal of the Court, and the defendant is neither a British subject nor in British Dominions, notice of the instrument, and not the instrument itself, is to be served upon him. Such service shall have the same force and effect as service of a writ of summons or other originating proceeding upon a British subject; and by leave of the Court or a Justice, upon their or his being satisfied by affidavit as aforesaid, the like proceedings may be had and taken thereupon.

As to form of notice, see Appendix, Form No. 4.

As to effect of service of writ on British subject out of jurisdiction, see r. 2, *supra*.

ORDER X.

Appearance.

1. *General.*

Appearance to writ of summons.

1. A defendant shall enter his appearance to a writ of summons in the District Registry from which the writ was issued, or, at his option, in cases in which he is permitted by this Act to enter it at the Principal Registry, at the Principal Registry; according to the exigency of the writ.

As to Registry in which appearance may be entered, see H.C.P. Act, sec. 6.
As to time limited for appearance, see Order V., r. 14.
As to proceedings in default of appearance, see Order XI.
The fees payable on entering appearance for each person, 2/6; if by a Corporation or Joint Stock Company, or a Company incorporated by Statute or Royal Charter, 10/-.

Mode of entering appearance.

2. A party entering an appearance shall do so by delivering to the proper officer a memorandum in writing dated on the day of its delivery, and containing the name of his solicitor, or stating that he appears in person.

There shall at the same time be delivered to the officer a duplicate of the memorandum, which the officer shall seal with the official seal, showing the date on which it is sealed, and shall then return to the person entering the appearance. The duplicate memorandum so sealed shall operate as a certificate that the appearance was entered on the day indicated by the seal.

For entry of conditional appearance, see r. 13, *infra*.
As to an appearance in an action against partners, see Order XLII., rr. 7, 8, 9.
Address for service to be in memorandum, rr. 3, 4, *infra*.
For form of entry of appearance, see Appendix, Forms Nos. 6, 9.
For form of entry of conditional appearance where defendant denies jurisdiction of Court, see Appendix, Form No. 7.
For form of entry of appearance of a guardian, see Appendix Form No. 8.

Defendant's address for service.

3. The solicitor of a defendant appearing by a solicitor shall state in such memorandum his name or firm and place of business, and also, if his place of business is distant more than one mile from the Registry at which the appearance is entered, a place to be called his address for service, which shall not be more than one mile from that Registry,

where any proceedings in the action may be left for him. And, if the solicitor is only agent for another solicitor, he shall add to his own name or firm and place of business the name or firm and place of business of the principal solicitor.

Defendant appearing in person.

4. A defendant appearing in person shall state in such memorandum his address, and also a place, to be called his address for service, which shall not be more than one mile from the Registry at which the appearance is entered.

Irregular memorandum. Fictitious address.

5. If the memorandum does not contain such address it shall not be received ; and, if the address is illusory or fictitious, the appearance may be set aside by the Court or a Justice on the application of the plaintiff.

Memorandum of appearance.

6. The memorandum of appearance shall be in the form in the Appendix with such variations as circumstances require.

Defendants appearing by same solicitor.

7. If two or more defendants in the same cause appear by the same solicitor and at the same time, the names of all the defendants so appearing shall be inserted in one memorandum.

Notice of appearance.

8. A defendant shall, on the day on which he enters his appearance, give notice of his appearance, in the form in the Appendix, to the plaintiff's solicitor, or, if the plaintiff sues in person, to the plaintiff himself. The notice may be given either by notice in writing served in the ordinary way at the address for service, or by prepaid letter directed to that address and posted on the day of entering appearance, and shall in either case be accompanied by the sealed duplicate memorandum.

For form of notice of appearance, see Appendix, Form No. 9.

Appearance at Principal Registry to be notified by telegraph to District Registry in certain cases.

9. If a defendant, being entitled to enter his appearance either at a District Registry or at the Principal Registry, elects to enter it at the Principal Registry, the Principal Registrar shall on the same day, at the cost of the defendant, notify to the District Registrar by telegraph that the appearance has been entered.

Solicitor not entering appearance.

10. A solicitor who fails to enter an appearance in pursuance of his written undertaking so to do shall be liable to attachment.

Time for appearance.

11. A defendant may appear at any time before judgment. If he appears after the time limited for appearance, he shall not, unless the Court or a Justice otherwise orders, be entitled to any further time for delivering his defence, or for any other purpose, than if he had appeared according to the exigency of the writ.

As to times limited for appearance, see Order V., r. 14.

Admiralty intervention.

12. In an action *in rem*, any person not named in the writ may intervene and appear on filing an affidavit showing that he is interested in the *res* under arrest, or in the fund in Court.

Conditional appearance.

13. A defendant in any cause may enter a conditional appearance, denying the jurisdiction of the Court, and shall not thereby be deemed to have submitted to the jurisdiction, except as to the costs occasioned by the appearance or by any application under this Rule; and he may thereupon apply to the Court or Justice for an order to set aside the service upon him of the originating proceeding, or the service upon him of notice thereof, as the case may be.

Or he may make such application before appearing, and without entering a conditional appearance.

If he enters a conditional appearance, and does not make such application promptly, the Court or Justice may set aside the conditional appearance with costs, to be paid by the defendant by whom it was entered.

If the application is made and dismissed, the conditional appearance shall be struck out, and the defendant may enter an appearance as in other cases.

For form of entry of conditional appearance, see Appendix, Form No. 7.
For form of notice of conditional appearance, see Appendix, Form No. 9.

2. *Persons under Disability.*

Appearance by infant.

14. An order for the appointment of a guardian *ad litem* of an infant in an action shall not be necessary, but the solicitor applying to enter an appearance for the infant shall make and file an affidavit in the form in the Appendix, with such variations as circumstances require.

As to actions by and against persons under a disability, see Order II., r 12., *et seq.*

As to proceedings when no appearance is entered, see Order XI., r. 1.

For form of affidavit, see Appendix, Form No. 8.

Guardian *ad litem* in matters other than actions.

15. An infant served with an originating proceeding in any cause or matter, not being an action, may appear on the hearing of the cause or matter by a guardian *ad litem* in all cases in which the appointment of a special guardian is not provided for. An order for the appointment of such guardian shall not be necessary, but the solicitor by whom he appears shall previously make and file an affidavit as in the last preceding Rule mentioned.

Other cases.

16. When proceedings in any cause or matter are directed to be continued against an infant, or an infant is at liberty to attend any proceedings in a cause or matter, he shall appear as in the last preceding Rule directed.

As to change of parties, and order to carry on proceedings when an infant is a party affected, see Order XII., rr. 4, 7.

ORDER XI.

Default of Appearance.

Default of appearance by infant or person of unsound mind.

1. When no appearance is entered to a writ of summons for a defendant who is an infant or a person of unsound mind who has not been so found or declared, the plaintiff shall, before proceeding with the action against the defendant, apply to the Court or a Justice for an order that some proper person be appointed as guardian of the defendant, by whom he may appear and defend the action.

Notice of application.

Such an order shall not be made unless it appears that the writ of summons was duly served, and that notice of the application was, after the expiration of the time allowed for appearance, and at least six clear days before the day in such notice named for hearing the application, served upon or left at the dwelling-house of the person with whom or under whose care the defendant is then residing, and also, if the defendant is an infant not residing with or under the care of his father or guardian, served upon or left at the dwelling-house of the father or guardian, if any, of the infant, unless the Court or Justice at the time of hearing the application dispenses with the last-mentioned service.

When a guardian has been appointed, he shall have the same time for appearance after the service of the order on him as if it were a writ of summons.

As to actions by and against persons under a disability, see Order II., r. 12, *et seq.*

As to entry of appearance by persons under a disability, see Order X., r. 13, *et seq.*

As to the times limited for appearance to Writs of Summons, see Order V., r. 14.

As to service upon infants and persons of unsound mind, see Order VIII., rr. 4, 5.

As to computation of time fixed by this rule, see Order LIII.

Default of appearance generally.

2. When a defendant fails to appear to a writ of summons, and the plaintiff is desirous of proceeding upon default of appearance under any of the following Rules of this Order, he shall, before taking such proceeding upon default, file an affidavit of service of the writ, or of notice in lieu of service, as the case may be.

As to default of appearance of the defendant at the trial, see Order XXXIII., r. 16.

Liquidated demand indorsed.

3. When the writ of summons is indorsed for a debt or liquidated demand only, and the defendant fails, or all the defendants, if more than one, fail, to appear thereto, the plaintiff may enter final judgment against such defendant or defendants for any sum not exceeding the sum indorsed on the writ, together with interest at the rate claimed by the indorsement at the rate agreed upon, if any, or, if no rate is claimed to have been agreed upon, at the rate of five per centum per annum, to the date of the judgment, and costs.

As to fee payable on entering judgment, see Scale of Fees, sub-title "Drawing Up and Entering Judgments and Orders."

Liquidated demand: Several defendants.

4. When the writ is indorsed for a debt or liquidated demand, and there are several defendants, of whom some appear to the writ, and others fail to appear, the plaintiff may enter final judgment as by the last preceding Rule provided against the defendants so failing to appear.

Where judgment entered against any defendant it does not prejudice plaintiff's right to proceed on action against the others, see r. 10, *infra*.

Detention of goods: Damages.

5. When the writ is indorsed with a claim for detention of goods and pecuniary damages, or either, and the defendant fails, or all the defendants, if more than one, fail to appear, the plaintiff may enter interlocutory judgment against such defendant or defendants, and a writ of inquiry may issue to assess the value of the goods and the damages, or either, as the case may be, in respect of the causes of action disclosed by the indorsement on the writ. But the Court or a Justice, instead of issuing a writ of inquiry, may order that the value and the damages, or either, shall be ascertained in any other way which the Court or Justice directs.

As to writs of inquiry and references as to damages, see Order XXXIII., r. 25.

The fee payable on sealing a writ of inquiry is 10/-.

Several defendants.

6. When the writ is indorsed as in the last preceding Rule mentioned, and there are several defendants, of whom some appear to the writ, and others fail to appear, the plaintiff may enter interlocutory judgment against the defendants so failing to appear. And in that case the value of the goods and the damages, or either, as the case may be, may be assessed, as against the defendants suffering judgment by default, at the same time as the trial of the action or issue therein against the other defendants. But the Court or a Justice may order that instead of proceeding to such trial, the value and the damages, or either, shall be ascertained by a writ of inquiry as directed by the last preceding Rule, or in any other way which the Court or Justice directs.

As to writs of inquiry and references as to damage, see Order XXXIII., r. 25.

Liquidated demand and detention of goods and damages.

7. When the writ is indorsed with a claim for detention of goods and pecuniary damages, or either, and is further indorsed for a debt or liquidated demand, and any defendant fails to appear to the writ, the plaintiff may enter final judgment against him for the debt or liquidated demand, with interest and costs, and may also enter interlocutory judgment for the value of the goods and the damages, or either, as the case may be, and may proceed as provided in Rules 5 and 6 of this Order.

As to writs of inquiry and references as to damages, see Order XXXIII., r. 25.

Setting aside judgment by default.

8. Any judgment by default under this Order may be set aside or varied by the Court or a Justice upon such terms as to costs or otherwise as the Court or Justice thinks fit.

As to setting aside judgment by default of pleading, see Order XXVI., r. 11.

By default of appearance at trial, see Order XXXIII., r. 18.

As to relief against judgment and orders, see Order XL.

As to staying proceedings, see Order XLIV.

9. In all actions not by this Order otherwise specially provided for, in case any defendant does not appear within the time limited by the writ for appearance, the plaintiff may, upon filing a proper affidavit of service and a statement of claim, proceed in the action as if the defendant had appeared. Default of appearance in actions not otherwise specially provided for.

As to filing statement of claim in Registry, when no appearance entered, see Order XVII., r. 7.

10. In any case in which a plaintiff enters judgment under the provisions of this Order against any defendants who fail to appear, the entry of judgment shall not, nor shall the issue of execution thereon, prejudice his right to proceed in the action against the other defendants. Effect of judgment by default.

As to entry of judgment against one of several defendants, see rr. 4,6.

ORDER XII.

Change of Parties.

1. A cause or matter shall not become abated by reason of the marriage, death, or insolvency of any of the parties, if the cause of action survives or continues, and shall not become defective by the assignment, creation, or devolution of any estate or title *pendente lite*. Action not abated where cause of action continues.

As to parties generally, see Order 2.

2. In case of the marriage, death, or insolvency, or devolution of estate by operation of law, of any party to a cause or matter, the Court or a Justice may, if it is necessary for the complete settlement of all the questions involved, order that the husband, personal representative, trustee, or other successor in interest, if any, of the party shall be made a party, or shall be served with notice in such manner and form as hereinafter prescribed, on such terms as are just, and may make such order for the disposal of the cause or matter as is just. In case of marriage, &c., or devolution of estate, Court may order successor to be made a party or served with notice.

As to obtaining such order *ex parte*, see r. 4, *infra*.
As to service upon continuing and new parties of order of appearance and indorsement thereon of notice requiring entry of appearance, see r. 5, *infra*.
As to discharge of order on appearance of person affected, see rr. 6, 7, *infra*.

3. In case of an assignment, creation, or devolution of any estate or title *pendente lite*, the cause or matter may be continued by or against the person to or upon whom the estate or title has come or devolved. In case of assignment, creation, or devolution of estate or title, action may be continued.

4. When by reason of marriage, death, or insolvency, or any other event occurring after the commencement of a cause or matter, and causing a change or transmission of interest or liability, or by reason of any person interested coming into existence after the commencement of the cause or matter, it becomes necessary or desirable that any person not already a party should be made a party, or that any person already a party should be made a party in another capacity, an order that the proceedings shall be carried on between the continuing parties and the new party may be obtained *ex parte*, either by any continuing party, or by any person who is made a party, on application to the Order to carry on proceedings.

Court or a Justice, upon an allegation of such change, or transmission of interest or liability, or of such person interested having come into existence. (*a*)

If the party applying to be made a party as plaintiff is an infant, the application must be made by him by his next friend.

As to service on new parties of the order continuing proceedings and the indorsement thereon of notice requiring entry of appearance, see r. 5, *infra*.

As to discharge of order on application of person so affected, see rr. 6, 7.

As to appointment of next friend, see Order II., rr. 15, 16.

As to appearance by infant, see Order X., rr. 14, 15.

(*a*) Where it became necessary, after the institution of an appeal to the High Court, to have the name of a new party substituted for that of the appellant, there being no provision for such a case in the Appeal Rules, the High Court made an order analogous to that prescribed by Rule 4 of Order XII., Part 1, of the Rules of the High Court (Rule 4 of Order XI., Part 1, Rules of the High Court, 1903), that the appeal should be carried on between the new party as the appellant, and the original respondent, and that the proceedings should be amended accordingly: *Williams* v. *Australian Mutual Provident Society* (2 C.L.R. 385 [1905]; 11 A.L.R. 438 [1905]).

Service of order to continue action.

5. Every order made under the last preceding Rule shall, unless the Court or Justice otherwise directs, be served upon the continuing parties, and also upon each such new party, unless the person making the application is himself the only new party; and the order shall from the time of such service, subject nevertheless to the next two following Rules, be binding on the person served therewith; and every person served therewith who is not already a party to the cause or matter shall be bound to enter an appearance thereto within the same time and in the same manner as if he had been served with a writ of summons. Notice of such obligation to appear shall be indorsed on the order before service.

As to time limited for appearance to writ, see Order V., r. 14.

As to entry of appearance, see Order X.

As to service of documents generally, see Order LV.

Application to discharge order by person under no disability or having a guardian.

6. When any person who is under no disability, or who is under no disability other than coverture, or who, being under some disability other than coverture, has a guardian *ad litem* in the cause or matter, is served with an order made under Rule 4 of this Order, he may apply to the Court or a Justice to discharge or vary the order at any time within eight days after the time allowed for appearance.

As to computation of time limited by this rule, see Order LIII.

By person under disability, having no guardian.

7. When any person who is under any disability other than coverture, and has no guardian *ad litem* in the cause or matter, is served with an order made under Rule 4 of this Order, he may apply to the Court or a Justice to discharge or vary the order at any time within eight days after the time allowed for the appearance of his guardian *ad litem* when duly appointed; and until the period of eight days has expired the order shall have no force or effect as against the last-mentioned person.

Computation of time limited by this rule, see Order LIII.

Death of sole plaintiff or defendant.

8. When the plaintiff or defendant in a cause dies, and the cause of action survives, but the plaintiff or the person entitled to proceed fails to proceed, the defendant, or the person against whom the cause may be continued, may apply to a Justice for an order requiring the plaintiff or the person entitled to proceed to do so within such time as is ordered : And in default the Justice may order the cause to be dismissed for want of prosecution, with or without costs, as in other cases.

For dismissal for want of prosecution through default of pleading, see Order XXVI., r. 1.

Through failure to give notice of trial, see Order XXXIII., r. 7.

ORDER XIII.

Leave to Sign Summary Judgment.

Application for summary judgment.

1. (1) When a defendant appears to a writ of summons specially indorsed under Order V., Rule 4, the plaintiff may, on affidavit made by himself or any other person who can swear positively to the facts verifying the cause of action and the amount claimed, if any, and stating that in his belief there is no defence to the action, apply to a Justice for liberty to enter final judgment for the amount so indorsed, or any part thereof, together with interest, if any, and costs. The Justice may thereupon, unless the defendant, by affidavit or *viva voce* evidence, or otherwise satisfies him that he has a good defence to the action on the merits, or discloses such facts as entitle him to defend, make an order giving the plaintiff leave to enter judgment accordingly.

(2) If on hearing of an application under this Rule it appears that the plaintiff is not entitled to judgment for the full amount claimed, or for all the relief claimed, the Justice may give the plaintiff leave to enter judgment for any sum which it appears that he is entitled to recover, or for any other relief to which it appears that he is entitled.

(3) When the sum for which leave is given to enter judgment in respect of a claim specially indorsed is not the whole amount for which leave to enter judgment is asked in respect of that cause of action, the Justice may either strike out the residue of the claim in respect of that cause of action or may allow the action to proceed in respect of such residue.

(4) Any defect in the special indorsement may be amended forthwith upon such terms as a Justice may think just.

(5) When an application has been dismissed on the ground of formal defects in the proceedings or in the evidence, a fresh application may be made on amended proceedings.

Under Order V., r. 4, a writ of summons may be specially indorsed with particulars of the nature of the claim, and of the amount if any, sought to be recovered.

As to defence, see Order XX.

As to amendment, see H.C.P. Act, ss. 23, 24 , Order XXVIII.

As to amendment of indorsement, see Order V., r. 2.

Application by summons.

2. An application by a plaintiff for leave to enter final judgment under the last preceding Rule shall be made by summons, returnable not less than four clear days after service. Copies of the affidavits intended to be used upon the application, and of all exhibits therein referred to, shall be served with the summons, and no further evidence shall be given on behalf of the plaintiff except by leave of the Justice.

Defendants may show cause.

3. The defendant may show cause against such application by affidavit, or by leave of the Justice by oral evidence, or by offering to bring into Court the sum claimed.

If he shows cause by affidavit, the affidavit shall state whether the defence alleged goes to the whole or to part only, and, if so, what part of the plaintiff's claim.

The Justice may, if he thinks fit, order the defendant, or, in the case of a corporation, any officer thereof to attend and be examined upon oath, or to produce any leases, deeds, books, or documents, or copies of or extracts therefrom.

As to discovery and inspection, see Order XXIX.
As to discovery by a corporation, see Order XXIX., r. 9.
As to production of books, see H.C.P. Act, s. 17.

Judgment for part of claim.

4. If it appears that the defence set up by the defendant applies only to a part of the plaintiff's claim, or that any part of his claim is admitted, the plaintiff shall have judgment forthwith for that part of his claim to which the defence does not apply, or which is admitted, subject to such terms, if any, as to suspending execution, or the payment of the amount levied, or any part thereof, into Court by the Marshal, the taxation of costs or otherwise, as the Justice may think fit; and the defendant may be allowed to defend as to the residue of the plaintiff's claim.

Where one defendant has good defence but other not.

5. If it appears to the Justice that any defendant has a good defence to the action, or ought to be permitted to defend, and that any other defendant has not such defence, and ought not to be permitted to defend, the former may be permitted to defend, and the plaintiff shall be entitled to enter final judgment against the latter, and may issue execution upon such judgment without prejudice to his right to proceed with the action against the former.

As to defence, see Order XX.
As to relief against judgments, see Order XL.

Leave to defend.

6. Leave to defend may be given unconditionally or subject to such terms as to giving security, or as to the time or mode of trial, or otherwise as the Justice may think fit.

As to security, see Order XXVIII.
As to place of trials, see Order XXXIII., r. 1.
As to mode of trial, see Order XXXIII., rr. 2-4.

Summary disposal.

7. On the hearing of an application, the Justice may, with the consent of all parties, dispose of the action in a summary manner.

Directions as to trial.

8. When leave, whether conditional or unconditional, is given to defend, the Justice shall have power to give such directions as to the further conduct of the action as might be given on a summons for directions under Order XV., and may order the action to be forthwith set down for trial.

9. When no order is made as to the costs of the application, or when the costs are referred to the Justice at the trial, and no trial afterwards takes place, or no order as to costs is made at the trial, the costs of the application shall be costs in the action. Costs.

As to costs generally, see Order LIV.

ORDER XIV.

Summary Judgment.—Actions for Account.

1. When a writ of summons has been indorsed with a claim for an account (*a*) under Order V., Rule 6, or when the claim indorsed on a writ of summons involves taking an account, the plaintiff may at any time after appearance, or after the time for entering an appearance has expired, apply to a Justice for an order to take the account. Order for account.

As to accounts, see Order XXXI.

(*a*) When a writ has been indorsed with a claim for an account of the money owing on a mortgage and for a foreclosure, the plaintiff is not entitled on an application under the Rules of the High Court, Part I., Order XIV., to an order for foreclosure (*Dalgety & Co. Ltd.* v. *Brown* XX. A.L.T. 45 (commented on)): *Riggall* v. *Muirhead and Others* (13 C.L.R. 436 [1911]).

2. An application for an order under the last preceding Rule shall be made by summons, and shall, when necessary, be supported by affidavits, stating concisely the grounds of the plaintiff's claim to an account. If any defendant has made default in appearance, the application may, as against him, be made *ex parte*. Applications how made.

As to default of appearance, see Order XI.

3. If the defendant does not, by affidavit or otherwise, satisfy the Justice that there is some preliminary question to be tried, an order for the proper accounts, and for all necessary inquiries, with such directions as are usual in similar cases, shall be made forthwith. Evidence in answer.

ORDER XV.

Summons for Directions.

1. Any party to an action may, at any time after the appearance of any defendant who is affected thereby, take out a general summons for directions. Summons for directions.

The summons shall specify the matters as to which directions are desired, and shall be addressed to and served upon all such parties to the action as may be affected thereby.

As to application by party to whom summons is addressed for directions as to nterlocutory proceedings, *vide* r. 5, *infra*.

Summons to be served two clear days before the return day thereof, see Order XLVI., r. 5.

Any subsequent application shall be made by summons, which shall be set down for further hearing on two days' notice, see r. 6, *infra*.

The fee payable on sealing a summons for directions is 5/-

Interlocutory proceedings.

2. Upon the hearing of the summons, the Court or Justice shall, so far as practicable, make such order as is just with respect to all the interlocutory proceedings to be taken in the action before the trial, and as to the costs of such proceedings, and more particularly with respect to the following matters :—Pleading, particulars, admissions, discovery, interrogatories, inspection of documents, inspection of real or personal property, examination of witnesses, place and mode of trial.

The operation of these Rules with respect to proceedings to be taken as to any matters particularly specified in this rule is subject to any direction given upon the summons for directions, see r. 8, *infra*.

As to pleading, see Order XVII, *et seq.*

As to admissions, see Order XXX.

As to particulars, see Order XVIII.

As to discovery, see Order XXIX.

As to inspection, see Order XXIX.

As to examination of witnesses, see Order XXXIV.

As to place and mode of trial, see Order XXXIII.

Adjournment.

3. The further hearing of the summons shall be adjourned from time to time until the conclusion of the action.

As to subsequent applications, see rr. 6, 7.

No affidavit necessary.

4. No affidavit shall be made or used on the hearing of the summons except by special order of the Court or Justice.

Parties to appiy for directions.

5. On the hearing of the summons, any party to whom the summons is addressed shall, so far as practicable, apply for any order or directions as to any interlocutory matter or proceeding in the action which he desires.

Subsequent applications.

6. When such a summons has been taken out, any application subsequent to the first hearing of the summons for any directions as to any interlocutory matter or proceeding by any party shall be made under the summons, which shall be set down for further hearing on two clear days' notice to the other party, stating the nature of the order or directions intended to be asked for.

As to adjourning the hearing of the summons from time to time, see r. 3, *supra*.

Costs of subsequent applications.

7. Any application by any party which might have been made at the first hearing of the summons shall, if granted on any subsequent application, be granted at the costs of the party applying, unless the Court or Justice is of opinion that the application could not properly have been made at the first hearing of the summons.

Effect of Order.

8. The operation of these Rules with respect to the proceedings to be taken by the parties as to any of the matters particularly specified in Rule 2 of this Order shall be subject to any directions given upon the summons for directions.

The matters specified in rule 2 are :—Pleading, Particulars, Admissions, Discovery, Interrogatories, Inspection of Documents, Inspection of Real and Personal Property, Examination of Witnesses, Place and Mode of Trial.

ORDER XVI.

Trial Without Pleadings.

Indorsement.

1. When the indorsement of the writ of summons in an action contains a statement sufficient to give notice of the nature of the plaintiff's claim or of the relief or remedy sought in the action, the plaintiff may also indorse on the writ a notice stating that if the defendant appears the plaintiff intends to proceed to trial without pleadings.

As to indorsement of writ of summons, see Order V.
As to power of Court to direct trial of issues, see H.C.P. Act, sec. 13, 14.
As to trial of questions of law and of fact without pleadings, see Order XXXII.

Notice of trial.

2. When the writ is so indorsed, no pleadings shall be required or delivered, except by order of the Court or a Justice ; and the plaintiff may, at the expiration of ten days after appearance, serve notice of trial without pleadings.

As to computation of time under this rule, see Order LIII.
As to notice of trial generally, see Order XXXIII., r. 7, *et seq.*

Defendant may apply for statement of claim.

3. When the writ is so indorsed, the defendant may, within ten days after appearance, apply to a Justice for an order for the delivery of a statement of claim, and on such application the Justice may order that a statement of claim shall be delivered, in which case the action shall proceed as if no such indorsement had been made ; or may order that the action shall proceed to trial without pleadings. In the latter case the Justice may, if he thinks fit, further order that either party shall deliver particulars of his claim or defence within a time to be specified in the order.

As to raising special defences, see r. 5, *infra.*
As to particulars, see r. 4, *infra*, and Order XVIII.
As to statement of claim, see Order XIX.

Particulars.

4. If the justice orders that the action shall proceed to trial without pleadings, and makes no order as to particulars, all defences shall be open at the trial to the defendant.

When particulars are ordered to be delivered, the parties shall be bound by the particulars so far as regards the matters in respect of which the order for particulars is made.

As to notice of special defences, see r. 5, *infra.*
As to particulars, see Order XVIII.

Special defences.

5. When the writ is so indorsed, and the defendant does not make application under Rule 3 of this Order, he shall not be allowed to rely on a set-off or cross-claim, or on the defence of infancy, coverture, fraud, a Statute of Limitations or discharge under the laws relating to bankruptcy or insolvency, unless within ten days after appearance he gives notice to the plaintiff, stating the defence upon which he so relies, and, in the case of a set-off or cross-claim, or of the defence of fraud, giving particulars thereof ; but all other defences shall be open at the trial to the defendant.

If the plaintiff sets up in reply to a set-off or cross-claim any such defence as hereinbefore enumerated, he shall give like notice thereof to the defendant before giving notice of trial.

As to pleading by way of set off and cross action, see Order XVII., r. 3.

ORDER XVII.

Pleading Generally.

Pleading to state material facts and not evidence.

1. Every pleading shall contain a statement, as brief as the nature of the case allows, setting out the material facts on which the party pleading relies to support his claim or defence, as the case may be, but not the evidence by which they are to be proved ; and shall, when necessary, be divided into paragraphs, numbered consecutively, and each containing, as nearly as may be, a separate allegation. Dates, sums, and numbers may be expressed in figures or in words. Every pleading shall be signed by the solicitor of the party, or by the party himself if he sues or defends in person.

Costs of prolix pleadings.

The Court or a Justice in adjudging the costs of the action shall at the instance of any party, and may without any request, inquire into any unnecessary prolixity, and may order the costs occasioned by the prolixity to be borne by the party responsible for it.

No pleading is defective on technical ground of want of Form, see r. 28, *infra*.

When further particulars are necessary, the Court or Justice may order them, see Order XVIII.

As to statement of claim, see Order XIX.

As to defence or cross claim, see Order XX.

As to reply and subsequent pleadings, see Order XXII.

Matters pending action, see Order XXIII.

Demurrer, see Order XXIV.

Default in pleadings, see Order XXVI.

Amendment, see Order XXVII., H.C.P. Act, ss. 23, 24.

As to pleading to a return to a writ of *Mandamus*, see Order XLVII., r. 21.

Pleadings in prohibition, see Order XLVII., r. 27.

As to information of *quo warranto* and defence and subsequent proceeding, see Order XLVII., r. 34, *et seq.*

Delivery of pleadings.

2. Except in cases in which no pleadings are required the plaintiff shall, at the time and in the manner prescribed by Order XIX., deliver to the defendant a statement of his claim, and of the relief or remedy to which he claims to be entitled. The defendant shall, at the time and in the manner prescribed by Order XX., deliver to the plaintiff his defence, if any ; and the plaintiff shall, at the time and in the manner prescribed by Order XXII., deliver his reply, if any, to the defence.

As to way in which pleadings should be delivered, see r. 7, *infra*.

As to times for delivering a statement of claim, see Order XIX., r. 3.

Of defence or cross claim, see Order XX., rr. 6, 7.

Of reply, see Order XXII., r. 1.

No delivery of pleadings allowed in vacation, see Order LIII.

For power of Court to enlarge or abridge time, see Order LIII., r. 6.

Set-off and cross-action.

3. A defendant may plead by way of set-off, or set up by way of cross-action, against the claim of the plaintiff or any of the plaintiffs, if more than one, any right or claim arising out of the plaintiff's claim or connected with it, whether the set-off or cross-claim sound in damages or not ; and the set-off or cross-claim shall have the same effect as a cross action, so as to enable the Court to pronounce a final

judgment in the same action, both on the original claim and on the cross-claim. But the Court or a Justice may strike out a defence by way of set-off or cross-claim, if in the opinion of the Court of Justice the set-off or cross-claim cannot be conveniently disposed of in the pending action, or ought not to be allowed, or may order that it shall be disposed of separately.

As to reliance on distinct grounds of cross-claim, see r. 4.
As to statement of reliance by defendant upon facts or circumstances in pleadings establishing a right of cross action, see Order XX., r. 9.
As to answer by way of cross action, see Order XX., r. 10.
As to judgment for balance, see Order XX., r. 11.
As to pleading matters arising pending action, see Order XXIII.

Relief founded on separate facts.

4. When the plaintiff seeks relief in respect of several distinct claims or causes of complaint founded upon separate and distinct grounds, they shall be stated, as far as may be, separately and distinctly. And the same rule shall apply where a defendant relies upon several distinct grounds of defence or cross-claim founded upon separate and distinct facts.

As to several defences, see r. 12, *infra*.

Particulars to be given in certain cases.

5. If the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars are necessary, particulars, with dates and items if necessary, shall be stated in the pleading: Provided that, if the particulars are of debt, expenses, or damages, and exceed three folios, the fact shall be so stated, with a reference to full particulars already delivered or to be delivered with the pleading.
As to giving further particulars, see Order XVIII.

Printing pleadings.

6. Pleadings may be either printed or written, or partly printed and partly written.

Delivery by filing.

7. Every pleading or other document required to be delivered to a party, or between patries, shall be delivered at the address for service, to the solicitor of every party who sues or appears by a solicitor, or to the party if he does not sue or appear by a solicitor; but if no appearance has been entered for any party, then the pleading or document shall be delivered by being filed in the Registry.

As to indorsement of address for service on originating proceedings and on memorandum of appearance, see Order I., rr. 3, 4, Order X., rr. 3,4.
As to service when no appearance or no address for service, see Order LV., r. 6.
As to service of documents generally, see Order LV.
The feespayable on filing a pleading required to be delivered when no appearance is entered is 2 /6.

Marking pleadings.

8. Every pleading shall be marked on the face with the number of the action ,the title of the action, the date of the day on which the pleading is delivered and the description of the pleading, and shall be indorsed with the name and address for service of the solicitor and agent, if any, delivering it, or the name and address for service of the party delivering it if he does not sue or appear by a solicitor.

As to title of proceedings, see Order I., r. 2.
As to the title of actions, see Order V., r. 9.
As to the address for service, see Order I., rr. 3, 4.

Plea of "Not guilty by statute" not to be used.

9. The defence of "Not guilty by statute" shall not be used.

Specific denial.

10. Every allegation of fact in any pleading, if not denied specifically or by necessary implication or stated to be not admitted in the pleading of the opposite party, shall be taken to be admitted, except as against an infant or a person of unsound mind.

As to general denial, see r. 15, *infra*.
As to effect of general denial, see r. 18, *infra*.
As to effect of denial of contract, see r. 19, *infra*.
When denials in defence, see Order XX., rr. 1,5.

Conditions precedent to be specified by party denying performance.

11. An averment of the performance or occurrence of all conditions precedent necessary for the case of either party shall be implied in his pleading; and when the performance or occurrence of any condition precedent is denied, the condition must, unless it appears already by implication, be distinctly specified in his pleading by the party denying it.

Several defences or answers.

12. Any party may, without leave, plead any number of separate defences or other replies or answers to the previous pleading of the opposite party.

As to pleading distinct grounds of defence, see r. 5, *supra*.

Pleadings to raise all grounds of defence or reply.

13. Each party must raise by his pleading all matters of fact which show that the claim of the opposite party is not maintainable, or that a transaction is void or voidable in point of law; and all grounds of defence or reply, as the case may be, must be pleaded which, if not raised, would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the preceding pleadings, as, for instance, fraud, release, payment, performance, facts showing illegality or invalidity of a contract either by statute or common law, or a Statute of Limitations.

As to payment into Court before or at the time of delivering defence, see Order XXI.

Departure.

14. A pleading shall not raise any new ground of claim, or contain any allegation of fact, inconsistent with the previous pleadings of the party pleading it.

General denial.

15. It is sufficient for a defendant in his statement of defence to deny generally any allegations in the statement of claim.

As to specific denial, see r. 10, *supra*.
Effect of denial, see rr. 18, 19, *infra*.
Denial in defence, see Order XX., rr. 1-5.

Confession and avoidance.

16. When a party admits any allegation in the pleading of the opposite party, and sets up other matter in answer thereto, he must, unless he amends his pleading, plead the other matter specifically in a further pleading.

As to amendment of pleadings see Order XXVII.

Joinder of issue.

17. Either party may, in any pleading subsequent to defence, join issue upon the last preceding pleading of the opposite party. Such joinder of issue shall operate as a denial of every material allegation of fact in the pleading upon which issue is joined, but it may except any facts which the party is willing to admit, and shall then operate as a denial of the facts not so admitted.

As to time for joinder of issue, see Order XXII., r. 3.

As to effect of joinder of issue; see Order XXII., r. 4.

Effect of general denial.

18. Subject to the next following Rule and to Order XX., a general denial of an allegation of fact in a previous pleading shall be construed as a denial of the allegation, and of all the alleged circumstances, whether of time, place, amount, or otherwise.

As to specific denials, see r. 10, *supra*.

General denial, see r., 15, *supra*.

Effect of denial of contract, see r. 19, *infra*.

Denial in defence, see Order XX., rr. 1-5.

Effect of denial of contract.

19. When a contract, promise, or agreement, is alleged in any pleading, a bare denial of the same by the opposite party shall be construed only as a denial in fact of the express contract, promise, or agreement alleged, or of the matters of fact from which the same may be implied by law, and not as a denial of the legality or sufficiency in law of the contract, promise, or agreement, whether with reference to any Act, or otherwise, or of the authority of any person by whom the contract, promise, or agreement, is alleged to have been made.

Effect of documents to be stated.

20. When the contents of a document are material, it is sufficient to state the effect thereof as briefly as possible, without setting out the whole or any part thereof, unless the precise words of the document or any part thereof are material.

As to setting out document at length in demurrer, see Order XXIV., r. 6.

Malice, knowledge, &c.,

21. When it is material to allege malice, fraudulent intention, knowledge, or other condition of the mind of any person, it is sufficient to allege the same as a fact without setting out the circumstances from which it is to be inferred.

Notice.

22. When it is material to allege notice to any person of any fact, matter, or thing, it is sufficient to allege the notice as a fact, unless the form or the precise terms of the notice, or the circumstances from which such notice is to be inferred, are material.

Implied contract or relation.

23. When any contract or any relation between any persons is to be implied from a series of letters or conversations, or otherwise from a number of circumstances, it is sufficient to allege the contract or relation as a fact, and to refer generally to the letters, conversations, or circumstances, without setting them out in detail. And if in such case the person so pleading desires to rely in the alternative upon more contracts or relations than one as to be implied from the circumstances, he may state them in the alternative.

Stated or settled account to be alleged.

24. When the cause of action is a stated or settled account, the same must be alleged with sufficient particulars, but when a statement of account is relied on by way of evidence or admission of some other cause of action which is pleaded, the same shall not be alleged in the pleadings.

As to not pleading evidence, see r, 1, *supra.*

Presumptions of law.

25. A party need not in any pleading allege any matter of fact which the law presumes in his favour, or as to which the burden of proof does not lie upon him, unless it has first been specifically denied by the other party; for example, the consideration for a bill of exchange when the plaintiff sues only on the bill, and not for the consideration as a substantive ground of claim.

Points of law may be raised by pleadings.

26. Any party may raise by his pleading any point of law, and any point so raised shall, if not previously disposed of, be disposed of by the Justice who tries the action, at or after the trial: Provided that by consent of the parties, or by order of the Court or a Justice, made on the application of either party, the same may be set down for hearing and disposed of at any time before the trial.

As to dismissal of action, see r. 27, *infra.*

As to disposal of questions of law on demurrer, see Order XXIV.

As to special case on questions of law, see Order XXXII.

Dismissal of action.

27. If in the opinion of the Court or Justice the decision of such point of law substantially disposes of the whole action, or of any distinct cause of action, claim of damages, ground of defence, set-off, or cross-claim therein, the Court or Justice may thereupon dismiss the action or give or make such other judgment or order therein as is just.

Technical objection.

28. No technical objection shall be made to any pleading on the ground of any alleged want of form.

As to amendment of defects or errors, see H.C.P. Act, sec. 23.

No proceedings in High Court to be invalidated by formal defect or irregularity, see H.C.P. Act, sec. 24.

As to setting aside proceedings for irregularity, see Order LVII., r. 7.

When judgment pleaded.

29. When a judgment is pleaded the party pleading must, within ten days after demand by the opposite party, deliver to him a copy of the judgment, certified by the proper officer of the Court by which the judgment was given. In default of such delivery, the Court or a Justice may order the pleading to be struck out or amended.

As to computation of time limited by this rule, see Order LIII.

Striking out pleading where no reasonable cause of action or defence disclosed.

30. The Court or a Justice may order any pleading to be struck out, on the ground that it discloses no reasonable cause of action or ground of defence, or that it shows that the action or defence is frivolous or vexatious; and in any such case the Court or a Justice may order that the action be stayed or dismissed, or that judgment be entered as upon default of pleading, as may be just.

See r. 31, *infra.*

Striking out pleadings in other cases.

31. The Court or a Justice may at any stage of the proceedings order to be struck out or amended any matter in any pleading which is unnecessary or scandalous, or which tends to prejudice, embarass, or delay the fair trial of the action ; and may in any such case order the costs of the application to be paid as between solicitor and client.

As to striking out a defence by way of set off or cross claim, see r, 3, *supra.*

At the request of a defendant, the whole or part of his defence may be struck out, see Order XXV., r. 3.

Where demurrer allowed to part of pleading that part deemed to be struck out, see Order XXIV., r. 11.

As to amendment of pleading, see Order XXVII., r. 3, *et seq* ; H.C.P. Act, Sec. 23.

Notices to plead or set down demurrer.

32. Upon every pleading, except a joinder of issue or a demurrer, there shall be indorsed a notice requiring the opposite party to deliver his pleading in reply thereto within the prescribed time.

Upon every demurrer there shall be indorsed a notice requiring the party whose pleading is demurred to to set the demurrer down within ten days for argument.

As to demurrer, see Order XXIV.

ORDER XVIII.

Particulars.

Order for particulars.

1. The Court or a Justice may in any case order either party to deliver to the other a further and better statement of the nature of the claim or defence, or further and better particulars of any matter stated in any pleading, notice, or written proceeding, upon such terms, as to costs and otherwise, as are just. (*a*)

As to particulars on summons for directions, see Order XV., r. 2.

As to delivery of particulars where judgment is sought without pleadings, see Order XVI., rr. 3, 4.

As to delivery of particulars with pleading in certain cases, see Order XVII., r. 5.

(*a*) Held by the High Court that in any civil action to which the Crown is a party, it is bound to the same extent as any other litigant to give particulars : *Rex* v. *Associated Northern Colleries* (11 C.L.R. 738 [1910]) ; (XVII. A.L.R. 359 [1910]).

Effect of order for particulars.

2. The party at whose instance particulars have been delivered under a Justice's order shall, unless the order otherwise provides, have the same length of time for taking any step in the action after the delivery of the particulars that he had at the return of the summons. Save as in this rule provided, an order for particulars shall not, unless the order otherwise provides, operate to stay proceedings, or to give any extension of time.

As to power of Court to enlarge the time for taking any proceedings, see Order LIII., r. 6.

Actions for damage by collision.

Preliminary acts to be filed.

3. In actions for damage by collision between vessels, unless the Court or a Justice otherwise orders, the plaintiff shall within seven days after the commencement of the action, and the defendant shall within seven days after appearance, and before any pleading is delivered, file in the Registry a document to be called a preliminary act, which shall be sealed up, and shall not be opened until ordered by the Court or a Justice, and which shall contain a statement of the following particulars :—

(*a*) The names of the vessels which came into collisoin, and the names of their masters ;
(*b*) The time of the collision ;
(*c*) The place of the collision ;
(*d*) The direction and force of the wind ;
(*e*) The state of the weather ;
(*f*) The state and force of the tide ;
(*g*) The course and speed of the vessel when the other was first seen ;
(*h*) The lights, if any, carried by her ;
(*i*) The distance and bearing of the other vessel when first seen ;
(*k*) The lights, if any, of the other vessel which were first seen ;
(*l*) Whether any lights of the other vessel, other than those first seen, came into view before the collision ;
(*m*) What measures were taken, and when, to avoid the collision ;
(*n*) The parts of each vessel which first came into contact ;
(*o*) What sound signals, if any, were given, and when ;
(*p*) What sound signals, if any, were heard from the other vessel, and when.

The Court or a Justice may, on the application of either party, order the preliminary acts to be opened at any time and the evidence to be taken thereon without its being necessary to deliver any pleadings ; but in that case, if either party intends to rely on the defence of compulsory pilotage, he may do so, upon giving notice thereof in writing to the other party, within two days from the opening of the preliminary acts or within such further time as the Court or a Justice allows.

The fee payable on filing a preliminary act is 5 /-.

Opening acts.

4. The preliminary acts may be opened as soon as the action has been set down for trial.

As to entry of action for trial, see Order XXXIII., r. 10.

ORDER XIX.

Statement of Claim.

Claim beyond indorsement.

1. When a statement of claim is delivered, the plaintiff may therein alter, modify, or extend his claim against any defendant who has appeared, without any amendment of the indorsement of the writ. (*Note.*—See Order XXXIII., Rule 1.).

As to trial without pleading, see Order XVI., r. 1.
As to pleading generally, see Order XVII.
As to amendment of writ, see Order XXVII., rr. 1, 2
As to statement of claim, see Order XXVII., r. 3.

Relief claimed to be specifically stated.

2. Every statement of claim shall state specifically the relief which the plaintiff claims, whether singly or in the alternative, and it shall not be necessary to ask for general or other relief, which may always be given, as the Court or a Justice thinks just, to the same extent as if it had been asked for. And the same rule shall apply to any cross-claim made by the defendant in his defence.

As to general rules of pleading, see Order XVII.

As to cross action, see Order XX., rr. 9, 10.

Statement of claim.

3. The delivery of statements of claim shall be regulated as follows :—

(*a*) Subject to the provisions of Order XI., Rule 9, as to filing a statement of claim when the defendant does not appear, a statement of claim need not be delivered unless the defendant at the time of entering his appearance, or within ten days thereafter, gives notice in writing to the plaintiff or his solicitor that he requires a statement of claim to be delivered :

(*b*) If a statement of claim has not been delivered, and the defendant gives notice requiring the delivery of a statement of claim, the plaintiff shall, unless otherwise ordered by the Court or a Justice, deliver it within six weeks from the time of his receiving such notice :

(*c*) The plaintiff may deliver a statement of claim, either with the writ of summons or notice in lieu of writ of summons, or at any time afterwards, either before or after appearance, notwithstanding that the defendant has appeared and has not required the delivery of a statement of claim : Provided that, when a defendant has appeared and has not required the delivery of a statement of claim, a statement of claim shall not, without the leave of the Court or a Justice, be delivered later than three months after the appearance has been entered :

(*d*) When the plaintiff delivers a statement of claim without being required to do so, or the defendant unnecessarily requires a statement of claim to be delivered, the Court or a Justice, if it appears that the delivery of a statement of claim was unnecessary or improper, may make such order as to the costs occasioned thereby as is just.

When a defendant fails to enter an appearance, plaintiff, on filing statement of claim may proceed ; see Order XI., r. 10.

As to manner in which pleadings are to be delivered, see Order XVII., r. 7.

As to dismissal of action for want of prosecution, when plaintiff makes default in delivery of statement of claim, see Order XXVI.

No delivery or amendment of statement of claim is allowed in vacation, see Order LIII., r. 3.

Vacation is not reckoned in time for delivery of pleading ; see Order LIII., r. 4.

As to time of day for service of pleading, see Order LIII., r. 7.

ORDER XX.

DEFENCE.

Mere denial insufficient.

1. In actions for a debt or liquidated demand in money, a mere denial of the debt is not sufficient.

As to pleading generally, see Order XVII.
As to insufficiency of a general denial, see Order XVII., r. 10.
As to general denial of allegations, see Order XVII., r. 15.
As to effect of a general denial, see Order XVII., r. 18.
And of a denial of contract, see order XVII., r. 19.
As to payment into Court, see Order XXI., r. 1.
As to defence of tender, see Order XXI., r. 2.
As to defence arising after action brought, see Order XXIII.

Defence to action on bills, &c.

2. In actions upon bills of exchange, promissory notes, or cheques, a defence in denial must deny some matter of fact; for example, the drawing, making, indorsing, accepting, presenting, or notice of dishonour, of the bill of note or cheque.

Defences to action for debt or liquidated demand.

3. In actions to recover a debt or liquidated demand under a contract, a defence in denial must deny any matters of fact from which the liability of the defendant is alleged to arise which are disputed; for example, in actions for goods bargained and sold or for goods sold and delivered, the defence must deny the order or contract, the delivery, or the amount claimed; in an action for money received to the use of the plaintiff, it must deny the receipt of the money, or the existence of those facts which are alleged to make such receipt by the defendant a receipt to the use of the plaintiff. (*a*)

As to effect of a bare denial of contract, see Order XVII., r. 19.

(*a*) Held by the High Court that where, in an action for compensation for land resumed by the Commonwealth, issue has been joined upon a plea of payment into Court without denial of liability, the only issue is whether the amount paid in is sufficient, and the plaintiff is entitled to that sum in any event: *Spencer* v. *Commonwealth* (5 C.L.R. 418 [1906]).

Pleading to Damages.

4. A denial or defence shall not be necessary as to damages claimed or their amount; but the damages shall be deemed to be put in issue in all cases, unless expressly admitted.

Denial of right of person in representative capacity.

5. If any party desires to put in issue the right of any other party to claim as executor or administrator, or as trustee, whether in bankruptcy or insolvency or otherwise, or in any representative or other alleged capacity, or to put in issue the alleged constitution of any partnership firm, he must do so specifically.

As to actions by and against persons in representative capacity, see Order II., rr. 8, 12, *et seq.*

Time for delivery of defence.

6. When a statement of claim is delivered to a defendant, he must deliver his defence within eight days from the time of the delivery of the statement of claim, or from the time limited for appearance, whichever is the later time, unless such period is extended by the Court or a Justice.

As to time limited for appearance, see Order V., r. 14.

As to manner of delivery of pleadings, see Order XVII., r. 7.

As to judgment in default of pleading, see Order XXVI., r. 2, *et seq.*

As to computation of time limited by this rule, see Order LIII.

No delivery or amendment of statement of claim is allowable in vacation, see Order LIII., r. 3.

Vacation is not to be reckoned in time for delivery of pleading, see Order LIII., r. 4.

As to time of day for service of pleading, see Order LIII., r. 7.

As to extension of time, see Order LIII., r. 6.

Time for delivery of voluntary defence.

7. A defendant who has appeared in an action, and who has neither received nor required the delivery of a statement of claim, must deliver his defence, if any, within sixteen days after his appearance, unless the time is extended by the Court or a Justice.

Admissions.

8. When a Court or a Justice is of opinion that any allegation of fact denied or not admitted by the defence ought to have been admitted, the Court or a Justice may make such order as is just with respect to any extra costs occasioned by the denial or failure to admit.

Cross-action.

9. When a defendant relies upon any facts or circumstances alleged in the pleadings as establishing a right of cross-action, he must, in his defence, state specifically that he relies on them by way of cross-action.

As to judgment in default of pleading, see Order XXVI.

As to right of cross action, see Order XVII., r. 3.

Answer by way of cross-action.

10. The plaintiff may set up, in reply to a defence by way of cross-action, any matter arising out of the facts alleged in the defence which would be available to him as a defence if the defence were a statement of claim in an action against him, notwithstanding that the reply may in itself be in the nature of a cross-action.

Judgment for balance.

11. When, in any action for a pecuniary demand, a set-off or cross-claim for a pecuniary demand is established as a defence against the plaintiff's claim, the Court or a Justice may, if the balance is in favour of the defendant, give judgemnt for the defendant for such balance, or may otherwise adjudge to the defendant such relief as he is entitled to upon the merits of the case.

Plea in abatement.

12. No defence shall be pleaded in abatement.

As to application to strike out or substitute a party, see Order II., r. 10.

ORDER XXI.

PAYMENT INTO COURT.

Defendant may pay money into Court with or without admitting liability.

1. In an action to recover a debt or damages, the defendant may, before or at the time of delivering his defence, or at any later time by leave of the Court or a Justice, pay into Court a sum of money by way of satisfaction, which shall, unless otherwise stated, be taken to admit the cause of action in respect of which the payment is made.(*a*)

Or he may pay money into Court in respect of any cause of action, with a defence denying liability in respect thereof; in which case the money so paid into Court shall be subject to the provisions of Rule 7 of this Order.

As to payment into Court being stated in defence, see r. 3, *infra*.

As to notice of payment being served on plaintiff, see r. 4, *infra*.

As to payment into Court in actions in respect of disputed contracts, see Order XLIII., r. 4.

(*a*) Held by the High Court that where, in an action of compensation for land resumed by the Commonwealth, issue has been joined upon a plea of payment into Court without denial of liability, the only issue is whether the amount paid in is sufficient, and the plaintiff is entitled to that sum in any event: *Spencer* v. *Commonwealth*, (5 C.L.R. 418 [1906]).

Defence of tender.

2. When a defence sets up a tender before action, the sum of money alleged to have been tendered must be paid into Court before the delivery of the defence.

Defence to state payment.

3. Payment into Court shall be signified in the defence, and the claim or cause of action, if any, in satisfaction of which the payment is made shall be specified therein.

Receipt to accompany.

A duplicate receipt for the money paid into Court shall be delivered with the defence.

Notice of payment.

4. If the defendant pays money into Court before delivering his defence, he must serve upon the plaintiff a notice specifying both the fact that he has paid in the money and also the cause of action in respect of which the payment has been made.

Receipt.

A duplicate receipt for the money paid into Court shall be delivered with the notice.

Plaintiff may accept in satisfaction.

5. When payment into Court is made before delivery of a defence, the plaintiff may, within eight days after notice of the payment, and when the payment is first signified in a defence the plaintiff may at any time before joining issue, accept in satisfaction of the cause of action in respect of which the payment has been made the sum so paid in, in which case he shall give notice of such acceptance to the defendant, and shall be at liberty, in case the whole action is thereby satisfied, to tax his costs, if he is entitled to any, after the expiration of

four days from the service of such notice, unless the Court or a Justice otherwise orders, and in case of non-payment of the costs within four days after taxation he may sign judgment for his costs so taxed. (*a*)

As to time for joining issue, see Order XXII., r. 3.

As to computation of time limited by this rule, see Order LIII.

(*a*) Held by the High Court that where, in an action for compensation for land resumed by the Commonwealth, issue has been joined upon a plea of payment into Court without denial of liability, the only issue is whether the amount paid in is sufficient, and the plaintiff is entitled to that sum in any event: *Spencer* v. *Commonwealth*, (5 C.L.R. 418 [1906]).

Payment out of Court.

6. When money is paid into Court before delivery of a defence, or when the liability of a defendant in respect of a claim or cause of action in respect of which money is paid into Court is not denied in the defence, the money paid into Court shall be paid out to the plaintiff at his request, or to his solicitor on his written order, unless the Court or a Justice otherwise orders.

When defence denies liability.

7. When the liability of the defendant in respect of the cause of action in satisfaction of which the payment into Court has been made is denied in the defence, the following Rules shall apply:—

(*a*) The plaintiff may accept, in satisfaction of the cause of action in respect of which the payment into Court has been made, the sum so paid in, in which case all further proceedings in respect of that cause of action, except as to costs, shall be stayed; or he may join issue, in which case the money shall remain in Court subject to the provisions hereinafter contained. (*a*)

(*b*) If the plaintiff accepts the money so paid in, he shall give notice of such acceptance to the defendant; and thereupon the money shall be paid out to him at his request or to his solicitor on his written order, unless the Court or a Justice otherwise orders.

(*c*) If the plaintiff does not accept, in satisfaction of the cause of action in respect of which the payment into Court has been made, the sum paid in, but proceeds with the action in respect of that cause of action, or any part thereof, the money shall remain in Court, and shall, on the determination of the action, be subject to the order of the Court or a Justice, and shall not be paid out of Court except in pursuance of such an order. If the plaintiff proceeds with the action in respect of that cause of action, or any part thereof, and recovers less than the amount paid into Court, the amount paid in shall be ordered to be applied, as far as is necessary, in satisfaction of the plaintiff's claim; and the balance shall, unless otherwise ordered, be repaid to the defendant. If the defendant succeeds in respect of that cause of action, the whole amount shall be ordered to be repaid to him.

As to payment out of Court of money paid in as security for costs, see Order XXVIII., r. 15.

On summons, see Order XLVI., r. 3.

As to time for delivery of joinder of issue, see Order XXII., r. 3.

(*a*) See note to r. 5 *supra*: *Spencer* v. *Commonwealth*, (5 C.L.R. 418 [1906]).

Consolidated actions.

8. When money is paid into Court in two or more actions which are consolidated, the money paid in and the costs in all the actions shall, unless otherwise directed by the order of consolidation, be dealt with in the same manner as in the test action.

As to consolidation of actions, see Order XLV.

ORDER XXII.

Reply and Subsequent Pleadings.

Time for reply.

1. A plaintiff shall deliver his reply, if any, within eight days after the defence or the last of the defences has been delivered, unless the time is extended by the Court or a Justice.

The provisions of this order are subject to any order made on a summons for directions, see Order XV.

As to the time for delivery of defence, see Order XX., rr. 6, 7.

As to the computation of time limited by this rule, see Order LIII.

Pleading by leave after reply.

2. No pleading subsequent to reply other than a joinder of issue shall be pleaded without leave of the Court or a Justice, and then shall be pleaded only upon such terms as the Court or Justice thinks fit.

As to the time of delivery of such pleading, see r. 3, *infra*.

Pleadings subsequent to reply.

3. Subject to the last preceding Rule, every pleading subsequent to reply shall be delivered within four days after the delivery of the previous pleading, unless the time is extended by the Court or a Justice.

As to computation of time under this rule, see Order LIII.

No delivery or amendment of pleadings is allowed in vacation; see Order LIII., r. 3.

Vacation is not to be reckoned in time for delivery of pleadings; see Order LIII., r. 4.

The time limited for giving security for costs also is not reckoned; see Order LIII., r. 5.

As to enlarging or abridging time, see Order LIII., r. 6.

Effect of joinder of issue.

4. As soon as any party has joined issue upon the preceding pleading of the opposite party simply, without adding any further or other pleading thereto, the pleadings as between those parties shall be deemed to be closed.

As to joinder of issue, see Order XVII., r. 17.

As to close of pleadings on default, see Order XXVI., r. 9.

New assignment

5. A new assignment shall not be necessary or used. But everything which would otherwise need to be alleged by way of new assignment shall be introduced by amendment of the statement of claim.

As to amendment of pleadings generally, see Order XXVII.

ORDER XXIII.

Matters arising Pending the Action.

1. Any ground of defence which has arisen after action brought, but before the defendant has delivered his defence, and before the time limited for his doing so has expired, may be set up by the defendant in his defence, either alone or together with other grounds of defence. And if, after a defence has been delivered, any ground of reply arises to any set-off or cross-claim alleged therein by the defendant, it may be set up by the plaintiff in his reply, either alone or together with any other ground of reply. Before defence.

As to time limited for delivery of defence, see Order XX., rr. 6, 7.

2. When any ground of defence arises after the defendant has delivered a defence, or after the time limited for his doing so has expired, the defendant may, and when any ground of reply to any set-off or cross-claim arises after relpy, or after the time limited for delivering a reply has expired, the plaintiff may, within eight days after such ground of defence or reply has arisen, or, by leave of the Court or a Justice, at any subsequent time, deliver a further defence or reply, as the case may be, setting forth such ground of defence or reply. Further defence or answer.

As to computation of time limited by this rule, see Order LIII.

3. When any defendant, in his defence, or in any further defence delivered as in the last preceding Rule mentioned, alleges any ground of defence which has arisen after the commencement of the action, the plaintiff may deliver a confession of that defence, and may thereupon sign judgment for his costs up to the time of the pleading of that defence, with costs of judgment, unless the Court or a Justice, either before or after the delivery of such confession, otherwise orders. Confession of defence.

ORDER XXIV.

Demurrer. (*a*)

(*a*) Held by the High Court that the party supporting a demurrer has the right to begin, except where there are cross-demurrers, in which case the plaintiff begins. Held also that it is not necessary to read pleadings, but only to state shortly their purport, and the points raised therein. It was also held that on demurrers two counsel will be heard: *Bond* v. *Commonwealth*, (1 C.L.R. 13 [1903]).

1. Any party may demur to any pleading of the opposite party, or to any part of a pleading which sets up a distinct cause of action, or to any distinct and severable claim for damages, or to any claim for damages exceeding an amount named by the demurring party, or to any pleading or part of a pleading of the opposite party which sets up a distinct ground of defence, set-off, cross-claim, or reply, as the case may be, on the ground that the facts alleged do not show any cause of action, claim for damages, or ground of defence, set-off, cross-claim, or reply, as the case may be, to which effect can be given by the Court as against the party demurring. Demurrer.

The provisions of this order are subject to such variations or modifications as the Court or a Justice may think fit to make on a summons for directions under Order XV.

No technical objection can be made to a pleading on the ground of any alleged want of form; see Order XVII., r. 28; see also H.C.P. Act, Sec. 24.

Demurrer to state whether the whole or part.
Ground.
Frivolous.
Demurrer set aside with costs.

2. A demurrer must state specifically whether it is to the whole or to a part, and if so to what part, of the claim or pleading of the opposite party. It must state some ground in law for the demurrer, but the party demurring shall not on the argument of the demurrer be limited to the ground so stated. If no ground or only a frivolous ground of demurrer is stated, the Court or a Justice may set the demurrer aside with costs.

Delivery.

3. A demurrer shall be delivered in the same manner and within the same time as any other pleading.

As to time and manner in which pleadings are to be delivered, see Order XVII., r. 7, and Order LIII., rr. 4, 7.

Demurrer and defence in one pleading.

4. When a party entitled to deliver desires both to demur and plead to the last pleading of the opposite party, or to demur to part of the last pleading of the opposite party and to plead to other part thereof, he shall combine the demurrer and other pleading.

As to right of party to plead and demur together without leave, see r. 5.

Leave to plead and demur together not necessary.

5. Any party may plead and demur to the same matter without leave. When a party demurring pleads as well as demurs, it shall be in the discretion of the Court or a Justice to direct whether the issues of law or fact shall be first disposed of.

Demurrer to claim founded on document.

6. When the claim or defence of any party depends, or may depend, upon the construction of a written document, and the party in his pleading refers to the document but does not set it out at length, the opposite party may, in his demurrer, set out the decument at length or so much thereof as is material, and demur to the claim or defence founded upon it, in the same manner as if it had been pleaded at length by the other party.

If he does not set out the document truly or sufficiently, the Court or a Justice may order the demurrer to be struck out or amended.

As to pleading the effect of documents in the first instance without setting out the documents at length, see Order XVII., r. 20.

Demurrer not entered for argument to be held sufficient.

7. When a demurrer, either to the whole or part of a pleading, is delivered, either party may set down the demurrer for argument before the Court immediately, and the party setting down the demurrer shall on the same day give notice thereof to the other party. If the demurrer is not set down and notice given within ten days after delivery, and if the party whose pleading or claim is demurred to does not within that time amend, the demurrer shall be held sufficient for the same purposes and with the same result as to costs as if it had been allowed on argument, and the same judgment may be entered thereon.

As to effect of decision on demurrer, see rr. 10, 11, *infra*.

As to indorsement on demurrer of notice requiring demurrer to be set down for argument, see Order XVII., r. 32.

As to computation of time limited by this rule, see Order LIII.

The fee payable on entering a demurrer for argument is £1.

Amendment pending demurrer.

8. While a demurrer to the whole or any part of a pleading is pending, that pleading shall not be amended except on payment of the costs of the demurrer, unless by leave of the Court or a Justice.

As to amendment generally, see H.C.P. Act, ss. 23, 24, and Order XXVII.

Costs when demurrer allowed.

9. When a demurrer to the whole or part of any pleading or claim is allowed upon argument, the party whose pleading or claim is demurred to shall pay to the demurring party the costs of the demurrer, and when a demurrer is overruled the demurring party shall pay to the opposite party the costs occasioned by the demurrer, unless in either case the Court otherwise orders.

As to costs generally, see Order LIV.

Effect of decision on demurrer going to whole action.

10. Subject to the power of amendment, when a demurrer to the whole of any pleading, so far as it relates to a separate cause of action, is allowed or overruled, the Court shall give such judgment as to that cause of action as upon the pleadings the successful party appears to be entitled to, and, if the judgment is for the defendant with respect to the whole action, the plaintiff shall pay to the defendant the costs of the action, unless the Court otherwise orders.

As to the power of the Court or a Justice to amend generally, see H.C.P. Act, ss. 23, 24, and Order XXVII.

As to costs generally, see Order LIV.

Where demurrer allowed to part of a pleading that part is to be deemed to be struck out.

11. When a demurrer to any pleading or claim or part of a pleading or claim is allowed in any case not falling within the last preceding Rule, then, subject to the power of amendment, the matter demurred to shall as between the parties to the demurrer be deemed to be struck out of the pleadings, and the rights of the parties shall be the same as if it had not pleaded.

Demurrer overruled with leave to plead.

12. When a demurrer is overruled, the Court may make such order, and upon such terms as the Court thinks fit, for allowing the demurring party to raise by further pleading any case which he desires to set up in opposition to the matter demurred to.

Form of entry for argument.

13. A demurrer shall be set down for argument by filing a copy of the pleadings so far as they relate to the matters of law raised by the demurrer, and delivering to the Registrar a memorandum of entry for argument.

As to the right of either party to set demurrer down for argument immediately after service of same, see r. 7, *supra*.

As to hearing of demurrer by a single Justice or Full Court, see r. 14, *infra*.

As to indorsement on demurrer of notice requiring demurrer to be set down for argument, see Order XVII., r. 32.

When demurrer required to be heard before Full Court.

14. When the party entering a demurrer for argument enters it to be heard before a single Justice, and any other party desires it to be heard before a Full Court in the first instance, he may, within four days after receiving notice that the demurrer has been so entered, deliver to the Registrar and to the opposite party a memorandum to that effect, and the demurrer shall thereupon be deemed to have been entered to be heard before a Full Court in the first instance.

If the action is pending in a District Registry, the pleadings shall be forthwith transmitted to the Principal Registry, unless a sitting of a Full Court is appointed to be held within sixty days at the place where the District Registry is situated. After the decision of the Full Court the pleadings shall be returned to the District Registry with a certificate of the judgment or order of the Full Court.

As to computation of time limited by this rule, see Order LIII.

Pleadings for Justices.

15. Four days at least before the day for which a demurrer is set down for argument, (*a*), the party setting it down shall leave at the chambers of the Justice, or at the chambers of each of the Justices who are to sit on the hearing of the argument, a copy of the pleadings so far as they relate to the matters of law raised by the demurrer.

As to computation of time limited by this rule, see Order LIII.

(*a*) The pleadings must be left at the Chambers of the Judge, four days at least before the demurrer is set down for argument.

On demurrers, two counsel will be heard : *Bond* v. *Commonwealth*, (1 C.L.R. 13 [1903]).

ORDER XXV.

Discontinuance, Etc.

Discontinuance of action before defence.

1. The plaintiff may, at any time before receipt of the defence of any defendant, or after the receipt of the defence, but before taking any other proceeding in the action against that defendant other than an interlocutory application, by notice in writing, wholly discontinue his action against that defendant, or withdraw any part of his alleged cause of action against that defendant, and thereupon he shall pay that defendant his costs of the action, or, if the action is not wholly discontinued, the taxed costs occasioned by the matter so withdrawn.

Such discontinuance or withdrawal, as the case may be, shall not be a defence to any subsequent action for the same cause.

The discontinuance of an action by the plaintiff shall not prejudice any action consolidated therewith, see r. 4 *infra*.

As to withdrawal of cause by consent, see r. 5, *infra*.

As to entering judgment for costs on discontinuance, see r. 6, *infra*.

As to subsequent action when costs of prior action not paid, see Order XLIV., r. 5.

As to security for costs where second action instituted for same cause, see Order XXVIII., r. 10.

The fee payable on filing a notice of discontinuance is 2/6.

Not otherwise except by leave.

2. Save as in this Order provided, a plaintiff may not withdraw the record or discontinue the action without leave of the Court or a Justice : But the Court or a Justice, may, before, or at, or after, the hearing or trial, upon such terms as to costs, and as to bringing any other action, or otherwise, as are just, order the action to be discontinued, or any part of the alleged cause of action to be struck out.

Court may allow a defendant to discontinue his defence.

3. The Court or a Justice may, in like manner, and with the like discretion as to terms, upon the application of a defendant, order the whole or any part of his defence to be withdrawn or struck out ; but a defendant may not withdraw his defence, or any part thereof, without such leave.

4. The discontinuance of any action by the plaintiff shall not prejudice any action consolidated therewith. Effect on consolidated actions.

As to consolidation of actions, see Order XLV.

5. When a cause has been entered for trial, it may be withdrawn by either the plaintiff or the defendant, upon production to the proper officer of a consent in writing, signed by the parties. Withdrawal by consent.

6. A defendant may enter judgment for the costs of the action if it is wholly discontinued against him, or for the costs occasioned by the matter withdrawn if the action is not wholly discontinued, if such respective costs are not paid within four days after taxation. Entering judgment on discontinuance.

As to defendants' right to costs on discontinuance of action, see r. 1, *supra*.

As to staying of subsequent action until such costs of prior actions are paid, see Order XLIV., r. 5.

As to computation of time limited by this rule, see Order LIII.

ORDER XXVI.

Default of Pleading.

1. If a plaintiff, being bound to deliver a statement of claim, does not deliver it within the time allowed for that purpose, the defendant may, at the expiration of that time, apply to the Court or a Justice to dismiss the action with costs for want of prosecution; and on the hearing of the application the Court or Justice may order the action to be dismissed accordingly, or may make such other order, and on such terms, as is just. Default of plaintiff in delivering statemtnt of claim.

As to the time limited for delivery of statement of claim, see Order XIX., r. 3.

As to dismissal of action for non-compliance with order for discovery, see Order XXIX., r. 19.

Or for failure to comply with order to produce books, see H.C.P. Act, s. 17.

Or upon failure to give notice of trial, see Order XXXIII., r. 7.

Or in default of plaintiff's appearance at trial, see Order XXXIII., r. 17.

As to fee payable on entering judgments, see Scale of Fees, sub-title "Drawing Up and Entering Judgment."

2. If the plaintiff's claim is for a debt or liquidated demand only, and any defendant fails to deliver a defence within the time allowed for that purpose, the plaintiff may, at the expiration of that time, enter final judgment against him for the amount claimed, together with interest at the rate claimed by the statement of claim as the rate agreed upon, if any, or, if no rate is claimed to have been agreed upon, at the rate of five per centum per annum to the date of the judgment, with his costs of action. Liquidated demand.

As to effect of judgment by default against one of several defendants, see r. 12 *infra*.

As to entry of judgment for debt or liquidated demand, where defendant fails to enter an appearance, see Order XI., r. 3.

Detention of goods: damages.

3. If the plaintiff's claim is for detention of goods and pecuniary damages, or either, and all the defendants make default as mentioned in Rule 2 of this Order, the plaintiff may enter interlocutory judgment against the defendants, and a writ of inquiry may issue to assess the value of the goods and the damages, or either, as the case may be. But the Court or a Justice may order that, instead of issuing a writ of inquiry, the value and the damages, or either, shall be ascertained in any other way which the Court or Justice directs.

As to judgment in such cases in default of appearance, see Order XI., r. 5.

As to writs of inquiry and references as to damages, see Order XXXIII., r. 25, *et seq.*

Several defendants.

4. When in any such action as in the last preceding Rule mentioned there are several defendants, of whom one or more make default as mentioned in Rule 2 of this Order, and the others do not make default, the plaintiff may enter interlocutory judgment against the defendants so making default. And in that case, the value of the goods and the damages, or either, as the case may be, may be assessed, as against the defendants suffering judgment by default, at the same time as the trial of the action or issues therein against the other defendants. But the Court or a Justice may order that, instead of proceeding to the trial, the value and the damages, or either, shall be ascertained by a writ of inquiry, as directed by the last preceding Rule, or in any other way which the Court or Justice directs.

As to judgment in such cases in default of appearance, see Order XI., r. 6.

As to effect of judgment by default against one of several defendants, see r 12, *infra.*

As to writs of inquiry and references as to damages, see Order XXXIII., r. 25, *et seq.*

Liquidated demand and detention of goods and damages.

5. If the plaintiff's claim is for detention of goods and pecuniary damages, or either, and also for a debt or liquidated demand, and any defendant makes default as mentioned in Rule 2 of this Order, the plaintiff may enter final judgment against him for the debt or liquidated demand, with interest and costs, and may also enter interlocutory judgment for the value of the goods and the damages, or either, as the case may be, and may proceed as provided in Rules 3 and 4 of this Order.

As to signing judgment in such cases in default of appearance, see Order XI., r. 7.

Defence to part claim only.

6. If the plaintiff's claim is for a debt or liquidated demand, or the detention of goods and pecuniary damages, or for any of such matters, and the defendant delivers a defence which purports to offer an answer to part only of the plaintiff's alleged cause of action, then, if the unanswered part consists of a separate cause of action, or is severable from the rest, as in the case of part of a debt or liquidated demand, the plaintiff may, by leave of the Court or a Justice, enter judgment, final or interlocutory as the case may be, for the part unanswered: Provided that, when there is a cross-claim, execution on the judgment in respect of the plaintiff's claim shall not issue without leave of the Court of a Justice.

Default in other cases.

7. In all other actions than those in the preceding Rules of this Order mentioned if the defendant makes default in delivering a defence the plaintiff may set down the action as against him on motion for judgment, and such judgment shall be given as upon the statement of claim the plaintiff appears to be entitled to.

As to application for judgment in default of any subsequent pleadings, see r. 10, *infra*.

As to motions for judgment, see Order XXXVI.

The fee payable on filing a notice of motion is 10/-.

On drawing up and entering judgment under this rule, 10/-.

One of several defendants in default.

8. When, in any such action as mentioned in the last preceding Rule, there are several defendants, then, if any defendant makes default in delivering a defence, the plaintiff may, if the cause of action is severable, set down the action at once on motion for judgment against that defendant, or may in any case set it down on motion for judgment against him at the time when it is entered for trial or set down on motion for judgment against the other defendants. In the first case the Court may adjourn the motion to come on at the time last mentioned.

As to effect of judgment by default against one of several defendants, see r. 12, *infra*.

As to motions for judgment, see Order XXXVI.

The fee payable on filing notice of motion is 10/-.

On entering judgment, 10/-.

Close of pleadings on default

9. If the plaintiff does not deliver a reply, or any party does not deliver any subsequent pleading, within the period allowed for that purpose, the pleadings shall be deemed to be closed at the expiration of that period, and all the material statements of fact in the pleading last delivered shall be deemed to have been admitted.

As to times limited for the delivery of pleadings, see Orders XIX., r. 3; XX., rr. 6, 7; XXII., rr. 1, 3; XXVII., r. 6.

As to close of pleadings by joinder of issue, see Order XXII., r. 4.

As to judgment on admission in pleadings, see Order XXX., r. 3.

Judgment by default in other cases.

10. In any case not hereinbefore provided for, if any party makes default in delivering any pleading, the opposite party may apply to the Court or a Justice for such judgment (if any) as upon the pleadings he appears to be entitled to. And the Court or Justice may order judgment to be entered accordingly, or make such other order as is necessary to do complete justice between the parties.

As to judgment on admission in pleadings, see Order XXX., r. 3.

As to motions for judgment, see Order XXXVI.

The fee on filing a notice of motion is 10/-.

Setting aside judgment by default.

11. Any judgment by default under this Order may be set aside or varied by the Court or a Justice, upon such terms as to costs or otherwise as the Court or Justice thinks fit.

As to setting aside judgment obtained by default, see Order XI., r. 8.

Of judgment in default of appearance at trial, see Order XXXIII., r. 18.

As to relief against judgments and orders, see Order XL.

Effect of judgemnt by default.

12. In any case in which a plaintiff enters judgment under the provisions of this Order against any defendant who makes default in delivering a defence, the entry of judgment shall not, nor shall the issue of execution thereon, prejudice his right to proceed in the action against the other defendants.

As to signing judgment against one or more of several defendants, see rr. 2, 4, 8, *supra*.

ORDER XXVII.

AMENDMENT.

Amendment in general.

1. The Court or a Justice may, in any cause or matter, at any stage of the proceedings, allow or direct either party to alter or amend the writ of summons, or any indorsement thereon or any pleadings or other proceedings, in such manner and on such terms as are just. (*a*)

As to general powers of amendment of defects and errors, see H.C.P. Act, ss. 23, 24.

As to correction of clerical mistakes and accidental omissions, see r. 9, *infra*.

As to amendment of indorsement on writ of summons, see Order V., r. 2.

Of pleading pending demurrer, see Order XXIV., r. 8.

Of admissions, see Order XXX., r. 2.

Of return to writ of habeas corpus, see Order XLVIII., r. 6.

Of irregular proceedings, see Order LVII., r. 6.

Of notice of appeal from judgment of a Justice of the High Court, see Part II., sec. 1, r. 4.

As to power of amendment by Full Court on such appeal see Par II., Sec. 1, r. 10.

Of amendment of notice of application for new trial, see Part II., Sec. 1, r. 21.

Of amendment of notice of appeal from Judgment of Supreme Court of States, see Part II., Sec. 3, r. 4.

(*a*) Held by the High Court that an amendment of pleadings should ordinarily be allowed if any harm arising from so doing can be compensated for by the imposition of terms upon the party asking for the amendment : *Shannon* v. *Lee Chun*, (15 C.L.R. 257 [1912]).

Amendment of writs of summons.

2. When a writ of summons or any indorsement thereon is amended, the amendment shall be made in such manner as to distinguish the amendments from the original matter, and the writ shall be resealed. A copy thereof, as amended, shall be filed, unless the Court or Justice allows the amendment to be made upon the copy of the original already filed.

As to amendment of indorsement on writ of summons, see Order V., r. 2.

The indorsement of a writ of summons need not be amended though the claim in the statement of claim goes beyond the claim indorsed on the writ ; see Order XIX., r. 1.

Amendment of statement of claim by plaintiff without leave.

3. The plaintiff may, without any leave, amend his statement of claim, or the indorsement on the writ when the indorsement is deemed to be the statement of claim, once at any time before the expiration of the time limited for reply and before replying, or when no defence is delivered at any time before the expiration of twenty-eight days from the appearance of the defendant who last appears.

As to disallowance of such amendment, see r. 5 *infra*.

As to statement of claim generally, see Order XIX.

As to the time limited for reply, see Order XXII., r. 1.

As to introduction by amendment of matter formerly alleged by new assignment, see Order XXII., r. 5.

As to computation of time limited by this rule, see Order LIII.

No amendment of pleadings allowed in vacation unless directed by the Court or Justice ; see Order LIII., r. 3.

Amendment of set-off by defendant without leave.

4. A defendant who has pleaded a set-off may, without any leave, amend the set-off at any time before the expiration of the time allowed him for pleading to the reply, and before pleading, or, if the only reply is a joinder of issue, then at any time before the expiration of eight days from the delivery of the joinder of issue.

As to disallowance of such amendment, see r. 5, *infra*.
As to set off generally, see Orders XVII., r. 3 ; XX., r. 11.
As to time allowed for pleading to reply, see Order XXII., r. 3.
As to computation of time limited by this rule, see Order LIII.
No amendment of pleadings allowed in vacation unless directed by the Court or a Justice ; see Order LIII., r. 3.

Disallowance of amendment.

5. When any party has amended his pleading or indorsement under either of the last two preceding Rules, the opposite party may, within eight days after the delivery to him of the amended pleading or indorsement, apply to the Court or a Justice to disallow the amendment, or any part thereof, and the Court or Justice may, if satisfied that the justice of the case requires it, disallow the same, or may allow it subject to such terms as to costs or otherwise as are just.

As to computation of time limited by this rule, see Order LIII.

Pleading to amended pleading.

6. When any party has amended his pleading or indorsement under the last-mentioned Rules, the opposite party shall plead to the amended pleading or indorsement, or amend his pleading, within the time which he then has to plead, or within eight days from the delivery of the amendment, whichever last expires ; and if the opposite party has pleaded before the delivery of the amendment, and does not plead again or amend within the time above-mentioned, he shall be deemed to rely on his original pleading in answer to such pleading as amended.

As to the times limited for the delivery of pleadings, see Orders XIX, r. 3 ; XX., rr. 6, 7 ; XXII., rr. 1, 3.
As to computation of time limited by this rule, see Order LIII.

Amendment by leave.

7. In any case not provided for by the preceding Rules of this Order, application for leave to amend any pleading or indorsement may be made by either party to the Court or a Justice, or to the Justice at the trial of the action, and the amendment may be allowed upon such terms as to costs or otherwise as are just.

Failure to amend after order.

8. If a party who has obtained an order for leave to amend any proceeding does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited then within fourteen days from the date of the order, the leave to amend shall, on the expiration of the time so limited, or of such fourteen days (as the case may be), cease to have effect, unless the time is extended by the Court or a Justice.

As to the computation of time limited by this rule, see Order LIII.
As to the power of the Court to enlarge time, see Order LIII, r. 6.

Clerical mistakes and accidental omissions.

9. Clerical mistakes in judgments or orders, or errors appearing therein and arising from any accidental slip or omission, may at any time be corrected by the Court or a Justice on motion or summons, and an appeal shall not lie from an order directing such amendment.

As to power to amend generally, see H.C.P. Act, ss. 23, 24 ; r. 1, *supra*.
As to relief against judgments, see Order XL.

ORDER XXVIII.

SECURITY.

1. *Security in General.*

General form of security.

1. Whenever in any cause or matter in the High Court security is required to be given by or on behalf of any party, the security shall, unless otherwise required by law or by these Rules, or unless otherwise directed by the Court or a Justice, be given by an instrument in writing signed by the person to be bound, whether as principal or surety, and setting forth that he submits himself to the jurisdiction of the Court, and consents that, upon the happening of the event specified in the instrument, judgment may be signed against him for the amount for which the security is given.

As to fees payable with respect to securities, see Scale of Fees, sub-title "Securities."

Title: Attestation.

2. The instrument shall be entitled in the cause or matter in which the security is given, and shall be executed by each person to be bound in the presence of a Registrar or a commissioner of affidavits, who shall satisfy himself that the person signing it understands the liability which he incurs and that the liability may be enforced against him in a summary way. The sureties may execute the instrument either together or separately.

A commissioner shall not attest a security on behalf of any person for whom he, or any person in partnership with him, is acting as solicitor or agent.

Form of bond for security.

3. When a bond is ordered to be given as security, it shall, unless the Court or Justice otherwise orders, be given to the party for whose benefit is is given.

Two sureties required.

4. The security shall, unless otherwise directed by Rules of Court, or unless otherwise ordered by the Court or a Justice, be given by two sureties, who shall be approved by the Registrar of the Registry in which the cause or matter is pending, and each of whom shall be bound in the full amount of the security.

Security to be filed of record.

5. Every instrument of security made under this Order shall be filed, and shall thereupon become a record of the Court.

As to time of filing, see r. 7 *infra*.
The fee payable on filing an instrument of security is 5/-.

Enforcement of security.

6. Any party claiming to be entitled to enforce the security against any person by whom it is signed may apply to a Justice by summons in the cause or matter in which the security is given for an order that judgment be entered against the person by whom the security is given in accordance with his submission, and the Justice may order that judgment be entered accordingly in favour of the party for such amount as is just.

To be filed within six months.

7. No such instrument, and no recognisance or other security of any kind, shall be filed after the expiration of six months from the time of its execution, except by order of the Court or a Justice, made upon notice to all the persons by whom the security was executed or their representatives.

Payment into court in lieu of security.

8. Any party directed to give security may give it by paying the amount for which security is to be given into Court to a separate account in the cause or matter, to be called the "Security Account," and to abide the order of the Court, and giving notice of the payment to the party for whose benefit the security is to be given. The notice shall be accompanied by an original receipt for the money paid into Court.

As to payment into Court, see Order XXI.

Security for Costs.

Security for costs of plaintiff.

9. A plaintiff ordinarily resident beyond the Commonwealth may be ordered to give security for the costs of the cause, whether he is or is not temporarily within the Commonwealth.

As to security by receiver, see Order XLIII., rr. 12, 13.

As to security for costs on issue of writ of *certiorari*, see Order XLVII., r. 10.

Security for costs on filing information of *Quo warranto*, see Order XLVII., r. 33.

As to when time for giving security for costs not to be reckoned, see Order LIII., r. 5.

As to security generally on appeals to the High Court, see H.C.P. Act, ss. 35, 36.

As to giving security for costs of appeal from a State Supreme Court appealed from, to High Court, see Part II., Sec. 3, r. 12.

As to amount of security to be given, see rr. 11, 12, *infra*.

As to the time at which an application for security for costs should be made, see r. 13 *infra*.

As to power of Court or a Justice to require security in any case, see r. 17, *infra*.

As to costs generally, see Order LIV.

When time for giving security for costs not to be reckoned; see Order LIII.

Second action for same cause.

10. When a plaintiff, who has been ordered to pay the defendant the costs of a cause whether in the High Court or another Court, institutes a fresh cause in the High Court against the same defendant in respect of the same, or substantially the same, cause of action, the Court or a Justice may order him to give a security for the costs of the fresh cause.

As to staying subsequent action until costs of first action paid, see Order XLIV., r. 5.

Security to be given.

11. When security for costs is ordered to be given, the security shall be of such amount and shall be given at such times, and in such manner, as the Court or a Justice directs.

Amount of security.

12. The amount of security shall, unless the Court or a Justice otherwise orders, be Fifty pounds.

As to amount of security, see H.C.P. Act., s. 35.

As to increase or decrease of amount on appeal, see H.C.P. Act, s. 36.

Time for application.

13. An application to compel the plaintiff in an action to give security for costs must, in ordinary cases, be made before issue joined: But the Court or a Justice may, under special circumstances, allow the application to be made at any later time.

Staying proceedings.

14. When a party is ordered to give security for costs, the action, or other proceeding in respect whereof the security is required to be given, shall be stayed until the security is given, unless the Court or a Justice otherwise orders.

As to staying proceedings generally, see Order XLIV.

As to when time for giving security for costs not to be reckoned, see Order LIII., r. 5.

Disposal of money paid into court.

15. In any case in which money has been paid into Court as security for costs, when the cause has been finally disposed of, if the party by whom the payment into Court was made is adjudged to pay the costs of the cause, or any balance in respect of the costs of the cause, or any other balance of costs in the cause, to any parties for whose security the payment was made, the amount standing to the credit of the "Security Account" in the cause shall, unless the Court or a Justice otherwise orders, be liable to be applied in payment of the costs so ordered to be paid to those parties. In any other case the party by whom the payment into Court was made shall be entitled to have the sum paid out to him.

As to payment of moneys into Court, see Order XXI.

Registrar to certify at conclusion of cause.

16. When a cause has been finally disposed of by consent or otherwise the Registrar shall, on the application of any party to the cause, and on being satisfied that that party is entitled to have any money standing to the credit of the "Security Account" paid out to him, give him a certificate to that effect.

Saving.

17. Nothing in the eight last preceding Rules shall be construed to affect the power of the Court or a Justice to require security for costs to be given by any party to any cause or matter in any case in which it is just that such security should be given.

As to giving security by plaintiff ordinarily resident beyond the Commonwealth, see r. 9, *supra*.

ORDER XXIX.

Discovery (*a*) and Inspection.

(*a*) Held by the High Court that in a civil action for penalties, in the absence of statutory provision to the contrary, the plaintiff is not entitled to an order for discovery of documents against the defendant. This rule applies equally to actions by the Crown and actions by a common informer: *Rex* v. *The Associated Northern Collieries*, (11 C.L.R. 738 [1910]).

Discovery by interrogatories.

1. In any cause the plaintiff or defendant may at any time before the plaintiff is in a position to give notice of trial, or at any later time by leave of the Court or a Justice, deliver interrogatories in writing for the examination of the opposite parties or any of them; and the

interrogatories when delivered shall have a note at the foot thereof, stating which of the interrogatories each of the parties is required to answer: Provided that no party shall deliver more than one set of interrogatories to the same party without a special order for that purpose.

Interrogatories which do not relate to any matters in question in the cause shall be deemed irrelevant, (*a*) notwithstanding that they might be admissable on the oral cross-examination of a witness.

As to power of High Court or Justice to order the examination of any person on interrogatories, see H.C.P. Act, s. 19.

As to interrogatories on summons for directions, see Order XV., r. 2.

Interrogatories may be administered to an accused person touching his contempt: see Order XLIX., r. 6.

(*a*) Held by the High Court that any facts relevant to the matter in issue may be the subject of interrogatories: *Potter's Sulphide Ore Treatment, Ltd.* v. *Sulphide Corporation, Ltd.*, (13 C.L.R. 101 [1901]).

Costs of interrogatories.

2. In adjudging the costs of the cause, inquiry shall, at the instance of any party, be made into the propriety of exhibiting any interrogatories, and if it is the opinion of the Court or a Justice upon the report of the taxing officer, or without such report, and either with or without an application for inquiry, that the interrogatories have been exhibited unreasonably, vexatiously, or at improper length, the costs occasioned by the interrogatories and the answers thereto shall be paid in any event by the party in fault.

Corporations.

3. If any party to a cause is a corporation or a joint stock company, or any body of persons empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite party may apply for an order allowing him to deliver interrogatories to be answered by some member or officer of the corporation, company, or body, on their behalf, and an order may be made accordingly.

As to discovery by corporations, see r. 9 *infra*.

Answer by affidavit.

4. Interrogatories shall be answered by affidavit to be filed within twenty-eight days after delivery of the interrogatories or within such other time as the Court or a Justice allows.

A copy of the affidavit shall be delivered to the interrogating party on the same day on which it is filed.

As to using interrogatories at trial, see r. 22 *infra*.

As to computation of time limited by this rule, see Order LIII.

Objections to interrogatories by answer.

5. An objection to answering any interrogatory, whether on the ground that it is scandalous or irrelevant, or is not delivered *bona fide* for the purpose of the cause, or that the matters inquired into are not sufficiently material at that stage of the cause, or on any other ground, may be taken in the affidavit.

No exception to be taken.

6. No exceptions shall be taken to any affidavit in answer, but the sufficiency or otherwise of any such affidavit objected to as insufficient shall be determined by the Court or a Justice on motion or summons.

As to order to answer or further answer, see r. 7 *infra*.

Order to answer or answer further.

7. If any party interrogated omits to answer, or makes an insufficient answer to any interrogatory, the party interrogating may apply to the Court or a Justice for an order requiring him to answer, or to make further answer, as the case may be. An order may thereupon be made requiring him to answer, or make further answer, either by affidavit or upon oral examination, as the Court or Justice directs.

As to what interrogatories are to be answered and in what manner, see r. 1 *supra*
As to using answer at trial, see r. 22 *infra*.

Application for discovery of documents.

8. Any party to a cause, may without any affidavit, apply to the Court or a Justice for an order directing any other party to the cause to make discovery (*a*) on oath of the documents which are or have been in his possesseion or power, relating to any matters in question in the cause. On the hearing of the application the Court or Justice may make such order, either generally or limited to certain classes of documents, as in their discretion seems fit, or may adjourn the application :

Provided that discovery shall not be ordered, if and so far as the Court or Justice is of opinion that it is not necessary, either for disposing fairly of the cause or for saving costs.

As to affidavit of documents and filing and delivery, see r. 10 *infra*.
As to effect of failure to comply with an order for discovery, see r. 19 *infra*.
(*a*) An application for discovery of documents made after issue joined must, in general, be made upon notice to the other party : *Ward* v. *C. W. McFarlane & Co.*, (22 C.L.R. 488 [1917]).
See also note to Order XXIX. *Rex* v. *Associated Northern Collieries*, (11 C.L.R. 738 [1910]).

Discovery by corporations.

9. If the party from whom discovery is sought is a corporation or a joint stock company, or any body of persons empowered by law to sue or be sued, whether in its own name, or in the name of any officer or other person, the application may be that the party, corporation, company, or body, shall make the discovery by the affidavit of some member or officer of the corporation, company, or body and an order may be made accordingly.

As to interrogatories to a corporation, see r. 3 *supra*.
As to affidavit of documents under this rule, see r. 10 *infra*.

Affidavit of documents.

10. The party or person required to make discovery under either of the two last preceding Rules shall make or procure to be made an affidavit giving the required discovery as to all such documents as are or have been in the possession or power of the party relating to the matters in question in the cause, in which affidavit shall be specified which, if any, of the documents therein mentioned the party objects to produce.

The affidavit shall be filed, and a copy thereof shall be delivered to the opposite party on the same day on which it is filed.

As to special order for discovery after delivery of affidavit of documents, see r. 15 *infra*.

Production of documents.

11. The Court or a Justice may, at any time during the pendency of any cause, order the production by any party thereto, upon his oath, or in the case of such parties as are mentioned in Rule 9 of this Order, upon the oath of some member or officer, of such of the documents in the possession or power of the party relating to any matter in question in such cause, as the Court or Justice thinks fit; and the Court or Justice may deal with such documents, when produced, in such manner as is just.

Rule 9 refers to a Corporation, a Joint Stock Company, or any body of persons empowered to sue or be sued.

As to production of documents for inspection, see rr. 12 *et seq*, *infra*.

As to order on refusal to produce or allow inspection of documents, see r. 14 *infra*.

As to non-compliance with order for discovery, see r. 19 *infra*.

As to order for attendance of person to produce documents, see Order XXXIV., r. 2.

As to attendance of witness under subpoena to produce documents, see Order XXXIV., r. 12.

As to order by Court to produce books and writings, see H.C.P. Act, s. 17.

Inspection of documents referred to in pleadings or affidavits.

12. Any party to a cause may, at any time, by notice in writing, require any other party in whose pleadings, particulars, or affidavits, reference is made to any document, to produce the document for the inspection of the party giving the notice, or of his solicitor, and to permit them to take copies thereof.

Any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in the cause, unless he, being a defendant in the cause, satisfies the Court or Justice that the document relates only to his own title, or unless he satisfies the Court or Justice that he had some other sufficient ground for not complying with the notice.

As to order for inspection of documents, see r. 14 *infra*.

As to notice to admit facts or documents, see Order XXX., r. 2.

Time and place for inspection. Bank and trade books.

13. A party to whom notice to produce documents is given shall, within two days from the receipt of the notice, if all the documents therein referred to have been set forth by him in the affidavit made under Rule 10 of this Order, or within four days from the receipt of such notice, if any of the documents referred to in the notice have not been set forth by him in any such affidavit, deliver to the party giving the notice to produce a notice stating a time within seven days from the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the office of his solicitor, or in the case of bankers' books or other books of account or books in constant use for the purposes of any trade or business, at their usual place of custody, and stating which, if any, of the documents he objects to produce, and on what ground.

As to order for inspection see r. 14 *infra*.

As to computation of times limited by this rule, see Order LIII.

Order for inspection.

14. If a party served with notice under the last preceding Rule omits to give such notice of a time for inspection, or objects to give inspection, or offers inspection elsewhere than at the office of his solicitor, the Court or Justice may, on the application of the party desiring it, make an order for inspection in such place and in such manner as they think fit.

As to order of verified entries in lieu of inspection, see r. 16 *infra*.

As to determination of an issue or question before the decision upon the right to discovery or inspection, see r. 18 *infra*.

Special order.

15. The Court or a Justice may, at any time, on the application of any party to a cause, and whether an affidavit of documents has or has not already been ordered or made, make an order requiring any other party to the cause to state upon affidavit whether any specific document to be specified in the application is or has at any time been in his possession or power; and, if it has been, but is not then, in his possession, when he parted with it, and what has become of it.

Such application shall be made on an affidavit stating that, in the belief of the deponent, the party against whom the application is made has, or has at some time had, in his possession or power the document specified in the application, and that it relates to matters in question in the cause.

As to affidavits of documents, see r. 10 *supra*.

Verified copies.

16. When inspection of any business books is applied for, the Court or a Justice may, if they think fit, instead of ordering inspection of the original books, order a copy of any entries therein to be furnished and verified by the affidavit of some person who has examined the copy with the original enties. Every such affidavit shall state whether or not there are in the original book any and what erasures, interlineations, or alterations; Provided that, notwithstanding that such a copy has been supplied, the Court or a Justice may order inspection of the book from which the copy was made.

Privilege.

17. When, on an application for an order for inspection, objection is made to the production of any documents, either on the ground of privilege or on any other ground, the Court or a Justice may inspect the document for the purpose of deciding as to the validity of the objection.

As to privilege, see notes to rr. 11, 14 *supra*.

Premature discovery.

18. If a party from whom discovery of any kind or inspection is sought objects to the discovery or inspection, or any part thereof, the Court or a Justice may, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the cause, or that for any reason it is desirable that any issue or question in dispute in the cause should be determined before deciding upon the right to the discovery or inspection, order that the issue or question shall be first determined, and may reserve the question as to the discovery or inspection.

As to order for inspection, see r. 14 *supra*.

Non-compliance with order for discovery.

19. If any party fails to comply with an order to answer interrogatories, or for discovery or inspection of documents, he shall be liable to attachment. He shall also, if a plaintiff, be liable to have his action dismissed for want of prosecution, and, if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended, and the party interrogating or seeking discovery may apply to the Court or a Justice for an order to that effect, and an order may be made accordingly.

Compare H.C.P. Act, s. 17.
As to order to answer interrogatories, see r. 7.
As to attachment generally, see order XLI.

Service on solicitor of order for discovery.

20. Service on the solicitor of a party against whom an order for interrogatories or discovery or inspection is made shall be sufficient service to found an application for an attachment for disobedience to the order. But the party against whom the application for an attachment is made may show in answer to the application that he has had no notice or knowledge of the order.

As to neglect by solicitor to give notice of trial to his client, see r. 21 *infra*.

Attachment of solicitor.

21. A solicitor upon whom an order against any party for interrogatories or discovery or inspection is served under the last preceding Rule, and who neglects without reasonable excuse to give notice thereof to his client, shall be liable to attachment.

As to attachment generally, see Order XLI.

Using answers to interrogatories at trial.

22. Any party may, at the trial of a cause, or any issue in a cause, use in evidence any answer, or any part of an answer, of the opposite party to any interrogatory without putting in the whole of the answer, or the answers to other interrogatories; Provided that in any case the Justice may look at the whole of the answers, and if he is of opinion that any other answer or part of an answer is so connected with the answer put in that the last-mentioned answer ought not to be used without the other, he may direct such other answer or part of an answer to be put in by the party tendering the answer.

Discovery against Marshal.

23. In an action by or against the Marshal in respect of any matters connected with the execution of his office, the Court or a Justice may, on the application of either party, order that the affidavit to be made in answer either to interrogatories or to an order for discovery shall be made by the officer actually concerned.

As to powers and duties of the Marshal and his officers, see Order LII.
As to actions by and against the Marshal, see H.C.P. Act, s. 31.

Order to apply to infants.

24. This Order shall apply to infant plaintiffs and defendants, and to their next friends and guardians *ad litem*.

As to infant plaintiffs and defendants, see Order II., r. 12.

ORDER XXX.

Admissions.

Notice of admission of facts.

1. Any party to a cause may give notice, by his pleading, or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party.

As to facts alleged in pleading being taken as admitted if not denied, see order XVII., r. 10.

As to costs where neglect to make proper admissions in statement of defence, see Order XX., r. 8.

Notice to admit facts or documents. Costs of refusal or neglect to admit.

2. Any party to a cause may, by notice in writing, call upon any other party to admit any specific fact, or any document, saving all just exceptions ; and, in case of refusal or neglect to admit after such notice, the costs of proving the fact or document shall be paid by the party so neglecting or refusing, whatever the result of the cause may be, unless at the trial or hearing the Court or Justice certifies that the refusal to admit was reasonable ; and no costs of proving any document shall be allowed unless such notice is given unless the omission to give the notice is, in the opinion of the taxing officer, a saving of expense.

Provided that any admission made in pursuance of such notice shall be deemed to be made only for the purposes of the particular cause or issue, and shall not be used as an admission against the party on any other occasion, or in favour of any person other than the party giving the notice : Provided also, that the Court or a Justice may at any time allow any party to amend or withdraw any admission so made on such terms as are just.

As to notice to produce documents, see Order XXIX., r. 12.

Judgment or order upon admissions of facts.

3. When admissions of fact have been made in a cause, either on the pleadings or otherwise, any party may, at any stage of the cause, apply to the Court or a Justice for such judgment or order as upon the admissions he is entitled to, without waiting for the determination of any other question between the parties ; and the Court or a Justice may, upon such application, make such order, or give such judgment, as is just.

As to judgment in default of pleading, see Order XXVI.

As to failure to deliver reply or plead to subsequent pleadings being deemed an admission of the facts contained in pleading last delivered, see Order XXVI., r. 9.

The fee payable on hearing a motion for judgment is 10/-.
The fee on filing any pleading or other document is 2/6.
The fee on drawing up and entering judgment is 10/-.

ORDER XXXI.

Issues, Inquiries, and Accounts.

Issues may be prepared and settled.

1. When in any cause it appears to the Court or a Justice that the issues of fact in dispute are not sufficiently defined, the parties may be directed to prepare issues, and the issues shall, if the parties differ, be settled by the Court or a Justice.

As to trial of issues of fact without pleading, see Orders XVI., XXXII., rr. 9, *et seq.*

Inquiries and accounts when directed.

2. The Court or Justice may, at any stage of the proceedings in a cause or matter, direct any necessary inquiries or accounts to be made or taken, notwithstanding that it may appear that there is some special or further relief sought for or some special issue to be tried, as to which it may be proper that the cause or matter should proceed in the ordinary manner.

The fee payable on drawing up and entering judgment is 10/-.

ORDER XXXII.

Questions of Law and Issues without Pleadings.

1. *Questions of Law.*

Special case by consent.

1. The parties to any cause may concur in stating the questions of law arising therein in the form of a special case for the opinion of the Court. Every such special case shall be divided into paragraphs numbered consecutively, and shall concisely state such facts and documents as may be necessary to enable the Court to decide the questions raised thereby. Upon the argument of the case the Court and the parties shall be at liberty to refer to the whole contents of any documents referred to therein, and the Court shall be at liberty to draw from the facts and documents stated in the case any inference, whether of fact or law, which might have been drawn therefrom if they had been proved at a trial.

Points of law may be raised by the pleadings; see Order XVII., r. 26.
Or on demurrer; see Order XXIV.

Special case by order before trial.

2. If in any cause it is made to appear to the Court or a Justice that there is any question of law which it would be convenient to have decided before any evidence is given or any question or issue of fact is tried, the Court or Justice may make an order accordingly and may direct the question of law to be raised for the opinion of the Court, either by special case or in such other manner as the Court or Justice deems expedient; and all such further proceedings as the decision of the question of law renders unnecessary may thereupon be stayed.

Special case to be filed.

3. Every special case shall be signed by the several parties or their solicitors, and shall be filed by the plaintiff.

The fee payable on filing a special case is £1.

Leave to set down where married woman, infant, or person of unsound mind is a party.

4. A special case in any cause to which a married woman, not being a party thereto in respect only of her separate property or in respect only of any separate right of action by or against her, or an infant, or a person of unsound mind who has not been so found or declared, or for whom a committee of the person or estate, as the case may be, has not been appointed, is a party, shall not be set down for argument without leave of the Court or a Justice, the application for which must be supported by sufficient evidence on oath that the statements contained in the special case, so far as the same affect the interest of the married woman, infant, or person of unsound mind, are true.

As to entry of case for argument, see r. 6 *infra*.

Agreement as to payment of money and costs.

5. The parties to a special case may sign a memorandum to the effect that, on the judgment of the Court being given in the affirmative or negative of any question of law raised by the case, a sum of money, fixed by the parties, or to be ascertained by the Court, or in such manner as the Court directs, shall be paid by one of the parties to the other of them, either with or without the costs of the cause ; and the judgment of the Court may be entered for the sum so agreed or ascertained, with or without costs, and execution may issue upon such judgment forthwith, unless otherwise agreed, or unless stayed on appeal.

As to ascertainment of damages when a matter of calculation, see Order XXXIII., rr. 27, 28.

As to fee payable on entering judgment, see Scale of Fees, sub-title, "Drawing Up and Entering Judgment."

Form of entry for argument.

6. Either party may enter a special case for argument by delivering to the proper officer a memorandum of entry, and, if any married woman, not being a party in respect only of such matters as in Rule 4 of this Order are specified, or if an infant, or any such person of unsound mind as mentioned in that Rule, is a party to the cause, producing a copy of the order giving leave to enter the special case for argument.

Special case may be heard before Full Court in the first instance.

7. When the party entering a special case for argument enters it to be heard before a single Justice, and any other party desires it to be heard before a Full Court in the first instance, he may, within four days after receiving notice that the case has been so entered, deliver to the Registrar and to the opposite party a memorandum to that effect, and the special case shall thereupon be deemed to have been entered to be heard before a Full Court in the first instance.

If the action is pending in a District Registry, the special case shall be forthwith transmitted to the Principal Registry, unless a sitting of the Full Court is appointed to be held within sixty days at the place where the District Registry is situated. After the decision of the Full Court the special case shall be returned to the District Registry with a certificate of the judgment or order of the Full Court.

The fee payable on filing a special case is £1.

Copies for Justices.

8. Four days at least before the day for which a special case is set down for argument the party setting it down shall leave a copy of the case at the Chambers of the Justice, or at the Chambers of each of the Justices who are to sit on the hearing of the argument.

As to computation of time limited by this rule, see Order LIII.

2. *Issues of Fact without Pleadings.*

Trial of question of fact agreed upon.

9. If the parties to a cause agree as to any questions of fact to be decided between them, they may, at any time before judgment, by consent and by order of the Court or a Justice, proceed to the trial of those questions of fact without formal pleadings. Such questions may be entered for trial and tried in the same manner as issues joined upon pleadings in an action, and the proceedings thereon shall be subject to the same control by the Court or a Justice as when issue is joined upon pleadings.

As to trial of actions without pleadings, see Order XVI.

10. The Court or a Justice may by consent of the parties order that, upon the finding in the affirmative or negative of any such question as in the last preceding Rule mentioned, a sum of money, fixed by the parties, or to be ascertained upon a question stated for that purpose, shall be paid by one of the parties to the other of them, either with or without the costs of the cause. Order for payment of sum of money.

As to ascertainment of damages when a matter of calculation, see Order XXXIII., rr. 27, 28.

11. Upon the finding on any such question as in the last two preceding Rules mentioned, judgment may be entered for any sum so agreed or ascertained, or for any other relief to which the finding shows either party to be entitled, with or without costs, as the case may be, and execution may issue upon the judgment forthwith, unless otherwise agreed, or unless the Court or a Justice otherwise orders for the purpose of giving either party an opportunity of moving to set aside the finding or for a new trial. Entry of judgment upon the finding.

12. The proceedings upon any such issue as aforesaid may be recorded at the instance of either party, and the judgment, whether actually recorded or not, shall have the same effect as any other judgment in a contested action. Record of proceedings.

ORDER XXXIII.

Trial.

1. *Place.*

1. The plaintiff may in the indorsement on his writ or in his statement of claim name the place where he purposes that the action shall be tried, which place shall be within the State in which the cause of action arose, and the action shall, unless the Court or a Justice otherwise orders, be tried in the place so named. When no place of trial is named, the place of trial shall, unless the Court or a Justice otherwise orders, be the place in which the Registry from which the writ was issued is situated. Place of trial.

The provisions of this order, so far as the same relate to the place and mode of trial, are subject to such modifications or variations as the Court or a Judge may think fit to make on a summons for directions under Order XV.

As to change of venue, see H.C.P. Act, s. 25.

As to appointing places of trial for different issues, see r. 4 *infra*.

As to applications as to place of trial in summons for directions, see Order XV., r. 2.

2. *Mode of Trial.*

2. Any party to a suit may within ten days after notice of trial has been given, or within such extended time as the Court or a Justice allows, apply to the Court or a Justice for a trial with a jury of the suit or of any issues of fact, and the Court or Justice may if they think fit direct a trial with a jury of the suit or issues accordingly, and thereupon they shall be so tried, and the notice of trial shall stand for the Trial by jury.

next appointed Sittings of the Court at the place of trial, not being earlier than the day for which the notice was given.

As to trial being by Justice without jury unless ordered, see H.C.P. Act, s. 12.

As to power of Court to direct trial with a jury of the suit or any issue of fact, see H.C.P. Act, s. 13.

As to power of Court to direct trial with jury at any time, see r. 3 *infra*.

As to questions of fact being tried differently or one before the other, see r. 4 *infra*.

As to trial with a jury being held before a single Justice unless otherwise ordered, see r. 5 *infra*.

As to giving notice of trial, see r. 6 *et seq*, *infra*.

As to early trial of cause, see Order XLIII., r. 8.

As to computation of time limited by this rule, see Order LIII.

Court may direct trial with jury at any time.

3. If in any cause or matter set down for trial before a Justice without a jury it appears to the Court or a Justice either before or at the trial that any issue of fact could be more conveniently tried before a Justice with a jury, the Court or Justice may direct that it shall be so tried, and may for that purpose vary any previous order.

Questions of fact may be tried differently, or one before the other.

4. Subject to the provisions of the preceding Rules of this Order, the Court or a Justice may, in any cause or matter, at any time or from time to time, order that different questions or issues of fact arising therein shall be tried by different modes of trial, or that some questions or issues of fact shall be tried before others, and may appoint the places for such trials, and may for that purpose vary any previous order.

As to power of Court or Justice to order early trial of causes, see Order XLIII,. r. 8.

Trial to be before single Justice unless specially ordered.

5. Every trial of a question or issue of fact with a jury shall be held before a single Justice, unless it is specially ordered to be held before two or more Justices.

3. *Notice and Entry of Trial.*

Notice of trial by plaintiff.

6. Notice of trial may be given with a joinder of issue closing the pleadings, or with the reply, or at any time after the issues of fact are ready for trial, or, if there are no pleadings, at any time after the expiration of ten days from appearance.

As to notice of trial where jury directed, see r. 2. *supra*.

As to notice of trial ceasing to have effect if entry for trial out of time, see r. 11 *infra*.

As to countermanding notice of trial, see r. 13 *infra*.

As to trial of action without pleadings, see Order XVI.

As to joinder of issue closing pleadings, see Order XXII.

As to trial of issue of fact without pleadings, see Order XXXII., r. 9, *et seq*.

As to computation of time limited by this rule, see Order LIII.

Notice of trial by defendant.

Motion to dismiss for want of prosecution.

7. If the plaintiff does not give notice of trial within three months after he is first entitled to do so, or within the like period after a new trial is ordered, or, in either case, within such extended time as the Court or a Justice allows, any defendant may, before notice of trial

given by the plaintiff, give notice of trial, or apply to the Court or a Justice to dismiss the action for want of prosecution; and on the hearing for such application the Court or a Justice may order the action to be dismissed accordingly, or may make such other order, and on such terms as are just.

As to dismissal of action for want of prosecution in default of pleading, see Order XXVI., r. 1.

As to computation of time limited by this rule, see Order LIII.

Form of notice of trial.

8. The notice of trial shall state whether it is for the trial of the cause or of questions or issues therein, and shall name the place where, and the day on which, the trial is to be had.

See r. 12 *infra*.

Length of notice.

9. Sixteen days' notice of trial shall be given, unless the party to whom it is given has consented, or is under terms, to take shorter notice of trial; and such notice shall be sufficient in all cases, unless otherwise ordered by the Court or a Justice.

This rule applies to an inquiry pursuant to a writ of inquiry; see r. 26 *infra*.

As to early trial, see Order XLIII., r. 8; as to Computation of time limited by this rule, see Order LIII.

Entry of cause for trial.

10. Notice of trial shall be given before entering the cause or questions or issues for trial; and a cause may be entered for trial, notwithstanding that the pleadings are not closed, provided that notice of trial has been given.

This rule applies to an inquiry pursuant to a writ of inquiry; see r. 26 *infra*.

As to time for entry for trial; see r. 11.

As to entry of trial by party served with notice of trial, see r. 14 *infra*.

As to copy of pleadings, etc., to be delivered for use of Justice at trial when entering cause for trial, see r. 15 *infra*.

As to when pleadings are closed, see Orders XXII., r. 4; XXVI., r. 9.

The fee payable on entering an action for trial before a Justice with or without a jury, in addition to the fees if any, payable in respect of a jury, is £1.

Avoidance of notice of trial.

11. The entry must be made within six days after notice of trial is given; otherwise the notice of trial shall cease to have effect.

As to entry of cause for trial, see r. 10.

As to computation of time limited by this rule, see Order LIII.

Notice of trial.

12. Notice of trial of a cause or questions or issues before a Justice with a jury shall be for the first day of the Sittings, unless the Court or a Justice allows it to be given for a later day.

As to trial by jury, see r. 2 *supra*.

Countermanding notice.

13. A notice of trial shall not be countermanded except by consent, or by leave of the Court or a Justice, which leave may be given subject to such terms as to costs, or otherwise, as are just.

This rule applies to an inquiry pursuant to a writ of inquiry; see r. 26 *infra*.

Entry for trial by party served with notice.

14. If the party giving notice of trial omits to enter the cause or issues for trial on the day of or the day after giving notice of trial, the party to whom notice has been given may, within four days thereafter, enter the same for trial, unless in the meantime the notice has been countermanded under the last preceding Rule.

As to entry of action for trial, see r. 10 *supra*.
As to computation of time limited by this rule, see Order LIII.

4. *Papers for Justice.*

Copies of pleadings, &c., to be delivered.

15. The party entering the cause or questions or issues for trial shall deliver to the proper officer two copies of the whole of the pleadings, if any, and of the issues, or of such other proceedings as show the questions for trial, one of which shall be for the use of the Justice at the trial.

As to entry of cause for trial, see r. 10 *supra*.

5. *Proceedings at Trial.*

Default of appearance by defendant at trial.

16. If, when a cause is called on for trial, the plaintiff appears, and the defendant does not appear, then the plaintiff may prove his claim, so far as the burden of proof lies upon him.

As to motion for judgment, see Order XXXVI.

Default of appearance by plaintiff.

17. If, when a cause is called on for trial, the defendant appears, and the plaintiff does not appear, the defendant shall be entitled to judgment dismissing the action.

As to motion for judgment, see Order XXXVI.

Judgment by default may be set aside on terms.

18. A verdict or judgment obtained where one party does not appear at the trial may be set aside by the Court or a Justice upon such terms as are just. If the cause was set down for trial in a place where there is no District Registry, the application may be made either at the place appointed for the trial before the close of the Sittings, or afterwards at the place where the District Registry is situated.

As to setting aside judgment obtained by default, see Orders XI., r. 8 ; XXVI., r. 11.

Adjournment of trial.

19. A Justice may, at or before the trial, if he thinks it expedient, for the interests of justice, postpone or adjourn a trial for such time, and to such place, and upon such terms, if any, as he thinks fit.

This rule applies to an inquiry pursuant to a writ of inquiry ; see r. 26 *infra*.
As to change of venue, see H.C.P. Act, s. 25.

Nonsuit.

20. When the plaintiff at the trial fails to establish by his evidence such a case as to call for an answer from the defendant, the Court may direct judgment of nonsuit to be entered.

As to effect of judgment of nonsuit, see r. 21 *infra*.
As to withdrawing juror, see Order XLIV., r. 4.

Effect of judgment of nonsuit.

21. A judgment of nonsuit shall not have the effect of a judgment on the merits for the defendants.

Judgment. Further consideration.

22. The justice may, at or after a trial, direct that judgment be entered for any or either party, or may adjourn the case for further consideration, or may leave any party to move for judgment.

As to motion for judgment, see Order XXXVI.

The fee payable on filing a written request to set down the cause or matter for further consideration is 5/-.

On hearing any cause or matter set down for further consideration, 10/-.

Entry of findings of fact on trial at Assizes, &c.

23. At every trial, when the officer present at the trial is not the officer by whom judgment ought to be entered, the associate shall enter all such findings of fact as the Justice directs to be entered, and the directions, if any, of the Justice as to judgment, and the certificates, if any, granted by the Justice, in a book to be kept for the purpose.

Certificate for entry of judgment.

24. If the Justice directs that any judgment be entered for any party absolutely, the certificate of the associate to that effect shall be a sufficient authority to the proper officer to enter judgment accordingly.

6. *Writs of Inquiry and References as to Damages.*

Writs of inquiry.

25. Writs of inquiry shall be directed to such persons as the Court or a Justice directs.

As to what rules are applicable in case of an inquiry, see r. 26 *infra*.

As to issue of writs to assess damages, see Orders XI., rr. 5, 6, 7; and XXVI., rr. 3, 4, 5.

Application of Rules.

26. The provisions of Rules 9, 10, 13 and 19 of this Order shall, with the necessary modifications, apply to an inquiry pursuant to a writ of inquiry.

Rules 9, 10, 13 and 19 deal with notice of, entry for, countermanding notice of, and adjournment of trial, respectively.

Ascertainment of damages when a matter of calculation.

27. In any cause in which it appears to the Court or a Justice that the amount of damages sought to be recovered is substantially a matter of calculation, it shall not be necessary to issue a writ of inquiry, but the Court or a Justice may direct that the amount for which final judgment is to be entered shall be ascertained by an officer of the Court. In any such case the attendance of witnesses and the production of documents before the officer may be compelled by subpoena, and the officer may adjourn the inquiry from time to time.

The officer shall certify by indorsement upon the order by which the question is referred to him the amount of damages found by him, and shall deliver the order with the indorsement to the person entitled to the damages; and the like proceedings may thereupon be had as to entering judgment, taxation of costs, and otherwise, as upon the return to a writ of inquiry.

Damages in respect of continuing cause of action.

28. When damages are to be assessed in respect of a continuing cause of action they shall be assessed down to the time of the assessment.

ORDER XXXIV.

EVIDENCE.

1. *Examination of Witnesses.*

Request to examine witnesses.

1. The Court or a Justice may, in any case in which a request to examine witnesses may by law be issued, order that a request to examine witnesses be issued in lieu of a commission.

Order for attendance of person to produce documents.

2. The Court or a Justice may, in any cause or matter, at any stage of the proceedings order the attendance of any person before the Court or a Justice for the purpose of producing any writing or other document named in the order which the Court or Justice thinks fit to be produced; Provided that no person shall be compelled to produce under any such order any writing or other document which he could not be compelled to produce at the hearing or trial. (*a*)

As to order by the High Court for production by parties of any books or writings in their possession containing evidence pertinent to issue, see H.C.P. Act, s. 17.

As to application for discovery of documents, see Order XXIX., rr. 8, 10.

As to production of documents for inspection, see Order XXIX., r. 11.

As to notice to admit documents, see Order XXX., r. 2.

(*a*) Held by the High Court that this rule does not apply to a case where discovery (or any act or acts, the performance of which amount to discovery) is sought against a person not a party to the suit, and therefore does not apply to proceedings (under the Commonwealth Electorial Act, 1902-1911 and the Election Rules of 1904) in the High Court in the exercise of its jurisdiction as the Court of Disputed Returns: *Hedges* v. *Burchell*, (17 C.L.R., 327 [1913]).

Disobedience to order for attendance.

3. Any person who wilfully disobeys an order requiring his attendance for the purpose of being examined or producing any document shall be deemed guilty of contempt of court, and may be dealt with accordingly.

As to examination of witnesses, see H.C.P. Act, s. 19.

As to attendance of witnesses under subpoena for examination, see r. 12 *infra*.

As to application for order directing attendance of witness duly summoned who refuses to attend, see r. 5 *infra*.

As to committal for contempt, see Order XLIX.

Expenses of person ordered to attend.

4. Any person required to attend for the purpose of being examined or of producing any document shall be entitled to the like conduct money and payment for expenses and loss of time as upon attendance at a trial in Court.

Refusal of witness to attend or to be sworn.

5. If any person duly summoned by subpoena to attend for examination refuses to attend, or if, having attended, he refuses to be sworn or to answer any lawful question, a certificate of the refusal, signed by the examiner, shall be filed in the Registry, and thereupon the party requiring the attendance of the witness may apply to the Court or a Justice, *ex parte* or on notice, for an order directing the witness to attend, or to be sworn, or to answer any question, as the case may be.

As to disobedience to order for attendance, see r. 3 *supra*.

The fee on filing a certificate of refusal of a witness to attend is 2/6.

Objection by witness to questions.

6. If any witness objects to any question which is put to him before an examiner, the question, and the objection of the witness thereto, shall be taken down by the examiner and transmitted by him to the Registry, to be there filed, and the validity of the objection shall be decided by the Court or a Justice.

As to costs occasioned by such objection, see r. 7 *infra*.

The fee on filing a question to which a witness objects, together with the objection is 2/6.

Costs occasioned by refusal or objection.

7. In any case under the two last preceding Rules, the Court or a Justice may order the witness to pay any costs occasioned by his refusal or objection.

Depositions to be transmitted to central office.

8. When the examination of any witness before an examiner has been concluded, the original depositions, authenticated by the signature of the examiner, shall be transmitted by him to the Registry, and there filed. Any party may have a copy of the depositions, of or any part thereof, on payment of the prescribed fee.

The fee prescribed for a copy of the depositions is 8d. for every folio.

Special report by examiner.

9. The person taking the examination of a witness may, and if need be shall, make a special report to the Court touching the examination and the conduct or absence of any witness or other person thereon, and the Court or a Justice may thereupon direct such proceedings to be taken and may make such order, as upon the report is just.

Depositions not to be given in evidence without consent or by leave of Justice.

10. Except as by this Act otherwise provided, no deposition shall be given in evidence at the hearing or trial of a cause or matter without the consent of the party against whom it is offered, unless the Court or Justice is satisfied that the deponent is dead or beyond the jurisdiction of the Court, or unable from sickness or other infirmity to attend the hearing or trial, in any of which cases the depositions certified under the hand of the person taking the examination shall be admissible in evidence, saving all just exceptions, without proof of the signature to the certificate.

Oaths.

11. Any officer of the Court or other person directed to take the examination of any person may administer the necessary oaths to him.

As to form of oath, see H.C.P. Act, s. 18.

2. *Subpoenas.*

Attendance of witness under subpoena for examination or to produce documents.

12. Any party to a cause or matter may, subject to these Rules, by a writ of subpoena ad testificandum or subpoena duces tecum require the attendance of any person, or the production of any document, before the Court or Justice at the hearing or trial, or on the hearing of any motion or application in the cause or matter, or before the Registrar or other officer of the Court or other person appointed to make any inquiry in the cause or matter, or before any person appointed to take any examination of witnesses.

As to disobedience to order for attendance, see r. 3 *supra*.

The fee payable on sealing a writ of subpoena for not more than three persons is 5/-; for every additional person named in the subpoena, 1/-.

Subpoena for attendance of witness in Chambers.

13. When a subpœna is required for the attendance of a witness for the purpose of proceedings in Chambers, the subpœna shall issue from the Registry upon a fiat of the Justice.

Subpoena for attendance before Registrar.

14. When a subpœna is required for the attendance of a witness for the purpose of proceedings before the Registrar or other officer of the Court, the subpœna shall be issued upon the direction of the Registrar or officer.

Service of subpoena.

15. The service of a subpoena shall be effected in the same manner as the service of a writ of summons in an action. The copy of a subpœna for a witness served upon him need not contain the name of any witness other than the person served.

As to time within which subpoena to be served, see r. 17 *infra*.

As to mode of service of writ of summons, see Order VIII., rr. 1,2.

Affidavit to prove service of subpoena.

16. Affidavits filed for the purpose of proving the service of a subpoena upon any person must state when, where, how, and by whom, the service was effected.

Within what time subpoena to be served.

17. The service of a subpœna shall be of no validity unless it is made within twelve weeks after the date of issue.

As to computation of time limited by this rule, see Order LIII.

ORDER XXXV.

Affidavits.

Cross examination of deponents.

1. The Court or a Justice may, on the application of any party, order that any person whose affidavit is proposed to be read in any proceeding shall attend before the Court or Justice, or an officer of the Court, or commissioner of affidavits, for cross-examination upon the affidavit.

As to evidence by affidavit on hearing of a matter, see H.C.P. Act, s. 20 (1).

As to proof on trial of a cause of service of a document or signature thereto, see H.C.P. Act, s. 20 (2).

As to order of proof of particular facts by affidavit or that affidavit of a person be read, see H.C.P. Act, s. 20 (3).

As to appointment of Commissioner, see H.C.P. Act, s. 22.

As to subpoena, see Order XXXIV., r. 12.

Title of affidavits.

2. Every affidavit shall be entitled in the cause or matter in which it is sworn, if any is then pending ; but in any case in which there are more plaintiffs or defendants than one, it shall be sufficient to give the full name of the first plaintiff or defendant, respectively, adding the words " and another," or " and others," as the case may be and the costs occasioned by any unnecessary prolixity in the title shall be disallowed by the taxing officer.

If no cause or matter is pending, it shall not be necessary to entitle the affidavit otherwise than as provided by Order 1, Rule 2.

As to title of affidavits in application for writs of *certiorari mandamus* or prohibition, or for leave to exhibit informations of *quo warranto*, see Order XLVII., r. 3.

Contents of affidavits.

3. Affidavits shall be confined to facts to which the deponent is able to depose of his own knowledge, except in the cases specially provided for by these Rules, and except in the case of affidavits used on interlocutory motions or applications, in which statements as to the belief of the deponent, giving the sources of his information and the grounds of his belief, may be admitted.

Form of affidavits.

4. Every affidavit shall be drawn up in the first person, and shall be divided into paragraphs, and every paragraph shall be numbered consecutively, and shall, as nearly as may be, be confined to a distinct portion of the subject. No costs shall be allowed for any affidavit or part of an affidavit which substantially violates this Rule.

As to indorsement of affidavit, see r. 11 *infra*.

Description and abode of deponent to be stated.

5. Every affidavit shall state the description and true place of abode of the deponent.

As to power of Court to allow use of a defective affidavit, see r. 13 *infra*.

Jurat. Several sheets.

6. The jurat of an affidavit must state that it was signed (*a*) and sworn by the deponent on the day and at the place where it was sworn. Each separate sheet must be signed by the deponent and by the person before whom the affidavit is taken, with the date and place of swearing added.

(*a*) On objection being taken that a jurat of an affidavit did not state that it was signed by the deponent on the day and at the place where it was sworn, such objection was overruled: *Prentice* v. *Amalgamated Mining Employees' Association of Victoria and Tasmania*, (15 C.L.R. 235 [1912]; 18 A.L.R. 343 [1912]).

Affidavits made by two or more deponents.

7. In an affidavit made by two or more deponents the names of the several persons making the affidavit must be inserted at length in the jurat, except that if the affidavit is sworn by all the deponents at the same time by the same officer it shall be sufficient to state that it was sworn by " both " or " all " the " above-mentioned " deponents, using those words.

Alterations in affidavits.

8. An affidavit which has either in the body thereof or in the jurat any interlineation, alteration, or erasure shall not, without leave of the Court or a Justice, be read or made use of in any cause or matter unless the interlineation or alteration, not being by erasure, is authenticated by the initials of the officer taking the affidavit, or, if the affidavit is taken in a Registry, either by his initials or by the office stamp; nor, in the case of an erasure, unless the words or figures appearing at the time of taking the affidavit to be written on the erasure are re-written and signed or initialled in the margin of the affidavit by the officer taking it.

As to use of defective affidavits, see r. 13 *infra*.

Affidavits by illiterate or blind persons.

9. When an affidavit is sworn by any person who appears to the officer before whom it is taken to be illiterate or blind, the officer shall certify in the jurat that the affidavit was read in his presence to the deponent, that the deponent seemed perfectly to understand it, and that the deponent made his signature or mark in the presence of the

officer. No such affidavit shall be used in evidence in the absence of this certificate, unless the Court or a Justice is otherwise satisfied that the affidavit was read over to and appeared to be perfectly understood by the deponent.

Affirmation.

10. When a deponent does not take an oath, the form of jurat shall be varied, and the necessary alterations made so as to conform with the solemn affirmation or other declaration of the deponent.

As to form of affirmation, see H.C.P. Act, s. 18.

Affidavits to be filed.

11. Every affidavit shall be filed in the Registry. A note shall be indorsed on every affidavit stating the name of the deponent and on whose behalf it is filed, and no affidavit shall, without the leave of the Court or a Justice, be filed or used without this note indorsed thereon.

As to stamping of affidavits, see r. 15 *infra*.
The fee for filing an affidavit unless otherwise provided is 2/6.

Scandalous matter.

12. The Court or a Justice may order any matter which is scandalous to be struck out from any affidavit, and may order the costs of any application to strike out such matter to be paid as between solicitor and client.

Use of defective affidavit.

13. Notwithstanding anything in the preceding Rules of this Order, the Court or a Justice may receive any affidavit sworn for the purpose of being used in any cause or matter, notwithstanding any defect, by misdescription of parties or otherwise, in the title or jurat, or any other irregularity, and may direct a memorandum to be made on the affidavit that it has been so received.

As to non-compliance with rules not rendering proceedings void, see Order LVII., r. 6.

Exhibits.

14. Every sheet of an annexure or exhibit to an affidavit shall be certified by the officer before whom the affidavit is taken, and signed by the deponent. Every such certificate shall be marked with the short title of the cause or matter.

The fee on filing exhibits referred to in an affidavit and not annexed thereto and required to be filed, is for each exhibit 1/-.

Stamping of affidavits and use of office copies.

15. Before an original affidavit is allowed to be used, it shall be stamped with a filing stamp to be kept for that purpose, and, if not already filed, shall at the time when it is used be delivered to and left with the proper officer in Court or in Chambers, who shall send it to be filed. An office copy of an affidavit may be used instead of the original, the original affidavit having been previously filed, and the copy being duly authenticated with the seal of the office.

As to filing affidavits, see r. 11 *supra*.
As to use of defective affidavits, see r. 13 *supra*.
As to office copies, see Order LVII., r. 4.

Affidavit sworn before solicitor or his agent.

16. An affidavit sworn before the solicitor acting for the party on whose behalf the affidavit is to be used, or before any agent, clerk, partner, or corespondent of such solicitor, or before the party himself, shall not be received.

Special times for filing affidavits.

17. When a special time is limited for filing affidavits, an affidavit filed after that time shall not be used without leave of the Court or a Justice.

Affidavits in support of *ex parte* applications.

18. Except by leave of the Court or a Justice an order made *ex parte* in Court founded on any affidavit shall not be drawn up unless the affidavit on which the application was founded was actually made before the order was applied for, and was produced or filed at the time of making the motion.

ORDER XXXVI.

Motion for Judgment.

Motion for judgment.

1. Except when by these Rules it is provided that judgment may be obtained in any other manner, the judgment of the Court shall be obtained upon motion for judgment.

As to entering final judgment in default of appearance, see Order XI.
In default of pleadings, see Order XXVI.
As to judgment or order upon admissions of fact, see Order XXX., r. 3.
The fee on hearing an action on motion for judgment is 10/-.

When no judgment given at trial.

2. When at the tiral of a cause the Justice does not direct any judgment to be entered, the plaintiff may set down the cause on motion for judgment. If he does not set down the cause and give notice of the setting down to the other parties within ten days after the trial, any defendant may set down the cause on motion for judgment and give notice of the setting down to the other parties.

As to computation of time limited by this rule, see Order LIII.

Setting down motion for judgment when issues have been directed and tried.

3. When issues have been ordered to be tried, or questions or issues of fact have been ordered to be determined in any manner, the plaintiff may set down a motion for judgment as soon as such questions or issues have been determined. If he does not set down the motion, and give notice of the setting down to the other parties within ten days after his right so to do has arisen, any defendant may set down a motion for judgment, and give notice of the setting down to the other parties.

As to trial of issues with a jury, see H.C.P. Act, s. 13, and Order XXXIII., r. 2, 5.
As to trial of issues on new trial, see H.C.P. Act, s. 14.
As to power of Court to direct trial with jury at any time, see Order XXXIII., r. 3.
As to the preparation and settling of issues, see Order XXXI., r. 1.
As to the trial of issues of fact without pleadings, see Order XXXII., r. 9 *et seq.*
As to computation of time limited by this rule, see Order LIII.

When some only of several issues directed have been tried.

4. When issues have been ordered to be tried, or questions or issues of fact have been ordered to be determined in any manner, and some only of those questions or issues of fact have been tried or determined, any party who considers that the result of that trial or determination renders the trial or determination of the other questions or issues of fact unnecessary, or renders it desirable that their trial or determination should be postponed, may, by leave of the Court or a Justice, set down a motion for judgment, without waiting for such trial or determination. And the Court or Justice may, if satisfied of the expediency thereof, give such leave, upon such terms, if any, as is just, and may give any directions which are desirable as to postponing the trial of the other questions or issues of fact.

As to issues of fact being tried differently or one before the other, see Order XXXIII., r. 4.

Motion to be set down within one year.

5. A motion for judgment shall not, except by leave of the Court or a Justice, be set down after the expiration of one year from the time when the party seeking to set down the same first became entitled to do so.

Power of Court on motion for judgment.

6. Upon a motion for judgment, the Court may draw any inference of fact not inconsistent with the findings of the jury, if any, and may, if satisfied that it has before it all the materials necessary for finally determining the questions in dispute, or any of them, or for awarding any relief sought, give judgment accordingly, or may, if not so satisfied, direct the motion to stand over for further consideration, and may direct such questions or issues of fact to be tried or determined, and such accounts and inquiries to be taken and made, as are just.

As to setting down motion for judgment when issues have been directed and tried, see r. 3 *supra*.

ORDER XXXVII.

Motions in General.

Title of notice of motions.

1. When a motion is made upon notice in a cause or matter, the notice shall be entitled in the cause or matter. When a cause or matter is originated by notice of motion, the notice shall be entitled in the matter of the Statute under which the motion is to be made, and in the matter of the application of the applicant, naming him for the relief sought, describing briefly the nature of such relief.

Originating notices.

2. When a cause or matter is originated by a notice of motion, a copy of the notice shall be filed before the motion is heard. In other cases a copy need not be filed.

Notice of motion to name Court.

3. A notice of motion shall state whether it is intended to be made before the Full Court or a Justice in Court, and the time and place at which it is intended to be made, and shall be signed with the name of the party intending to move, or his solicitor, if he sues or appears by a solicitor, and addressed to the party to be affected by the order sought.

4. On days on which the Court sits to hear motions, they shall, unless the Court otherwise orders, be heard before the matters set down in the paper are called on for hearing, and Counsel may move them in the order of their seniority. To be moved by counsel in order of seniority.

5. If a motion of which notice has been given is not moved at the sitting of the Court for which notice was given, or at the first adjournment of that sitting at which the motion could be made, the party to whom the notice was given may, on filing an affidavit stating the facts, obtain an order for the payment to him by the party by whom the notice was given of his costs of the motion, and such order may be drawn up and signed by the Registrar without other warrant than this Rule. But any such order may be set aside by the Court or a Justice upon sufficient cause shown. Costs of abandoned motions.

6. Except as by these rules otherwise provided, a motion or application shall not be made without previous notice to the party to be affected thereby. But the Court or a Justice, if satisfied that the delay caused by giving notice, would, or might, entail irreparable or serious mischief, may make an order *ex parte* upon such terms as to costs or otherwise, and subject to such undertaking, if any, as the Court or Justice may think just, and any party affected by any such order may move to set aside. Where notice of motion to be given. *Ex parte* applications.

As to time limitation of motion for judgment, see Order XXXVI., r. 5.

7. Unless the Court or a Justice gives special leave to the contrary which leave may be obtained *ex parte*, there must be at least two clear days between the service of a notice of motion and the day named in the notice for making the motion. Length of notice of motion.

As to time, see Order LIII.
As to service, see Order LV.

8. If, on the hearing of a motion, the Court is of opinion that any person to whom notice has not been given ought to have notice, the Court may either dismiss the motion, or may adjourn the hearing thereof, in order that such notice may be given, upon such terms, if any, as the Court may think fit. Motions may be dismissed or adjourned where necessary notice not given.

As to power of Court on motion for judgment, see Order XXXVI., r. 6.

9. The Court may order that any question of fact arising upon a motion shall be tried in any manner in which any question or issue of fact in an action may be tried. Trial of questions of fact.

10. A plaintiff may, without any special leave, serve any notice of motion upon any defendant along with the originating proceeding, or at any time after service of the originating proceeding, and before the time, if any, limited for the appearance of such defendant. Service of notice of motion with originating proceedings.

As to service of originating proceedings, see Order VIII.
As to appearance, see Order X.

Service of notice.

Defendant served but not appearing.

11. A plaintiff may, without any special leave, serve any notice of motion, or any other notice, or any petition or summons, upon any defendant, who, having been duly served with the originating proceeding and required to appear, has not appeared within the time limited for that purpose.

Notice of affidavits.

12. A list of all affidavits intended to be used in support of a motion shall be served with the notice of motion, and no other affidavits shall be used, or other evidence given, by the party moving on the hearing without the leave of the Court.

When the party moving intends to adduce oral evidence on the hearing of a motion, notice of such intention shall be served with the notice of motion.

Copies of affidavits on originating motions to be served.

13. Copies of all affidavits intended to be used in support of a motion by which a cause or matter is originated shall be served with the notice of motion.

As to service generally, see Order LV.

As to copies of affidavits, see Order XXXV., r. 15.

ORDER XXXVIII.

Entry of Judgments.

Mode of entry.

1. Every judgment shall be entered by the proper officer in a book kept for that purpose. The party entering the judgment shall deliver to the officer a copy of the whole of the pleadings, if any, not already filed.

Date of judgment pronounced in court.

2. When a judgment is pronounced by the Court, the entry of the judgment shall be dated as of the day on which such judgment is pronounced, unless the Court otherwise orders, and the judgment shall take effect from that date ; Provided that by special leave of the Court a judgment may be ante-dated or post-dated.

As to pronouncement of judgments, see Order of the Court, No. 162, page 155.

Date of entry of other judgments.

3. In any other case the entry of judgment shall be dated as of the day on which the requisite documents are left with the proper officer for the purpose of such entry, and the judgment shall take effect from that date.

Time to be stated for doing any act ordered to be done.

4. Every judgment or order made in any cause or matter requiring any person to do any act thereby ordered to be done, shall state the time, or the time after service of the judgment or order, within which the act is to be done, and there shall be indorsed upon the copy of the judgment or order served upon the person required to obey the same a memorandum in the words or to the effect following, viz. :—

Memoraundum to be indorsed.

> "If you, the within-named A.B., neglect to obey this judgment (*or* order) by the time therein limited, you will be liable to process of execution for the purpose of compelling you to obey the judgment (*or* order)."

As to time, see Order LIII.

As to service, see Order LV.

Judgment on production of affidavit or document.

5. When by any Statute or these Rules or otherwise, it is provided that any judgment may be entered upon the filing of any affidavit or production of any document, the officer shall examine the affidavit or document produced ; and, if the same is regular and contains all that is by law required, he shall enter judgment accordingly.

Judgment on production of order or certificate.

6. When by any Statute or these Rules, or otherwise, it is provided that any judgment may be entered pursuant to any order or certificate, or to the return of any writ, the production of such order or certificate sealed with the seal of the Court, or of such return, shall be sufficient authority to the officer to enter judgment accordingly.

As to Seals generally, see H.C.P. Act, ss. 3 to 5.

Judgment on Registrar's certificate.

7. When reference is made to the Registrar to ascertain the amount for which final judgment is to be entered, the Registrar's certificate shall be filed in the Registry before judgment is entered.

Judgment by consent when party appears by a solicitor.

8. When a party sues or appears by solicitor, a consent order for entering judgment against such party shall not be made unless the consent of the party is given by his solicitor or the town agent of his solicitor.

As to appearance, see Order X.

Consent of party in person.

9. When the plaintiff sues in person, or the defendant has not appeared, or has appeared in person, a consent order for entering judgment against such party shall not be made unless the party attends before a Justice and gives his consent in person, or unless his written consent is attested by a solicitor acting on his behalf, unless the party is himself a barrister or solicitor.

As to appearance, see Order X.

Entry of satisfaction.

10. A memorandum of satisfaction of a judgment may be entered upon a consent to the entry, signed by the party entitled to the benefit of the judgment, and attested and verified by the affidavit of the attesting witness, being filed in the Registry.

If the attesting witness is not a barrister or solicitor, the approval of a Justice must be obtained, which may be indorsed on the affidavit.

ORDER XXXIX.

Drawing Up Judgments and Orders.

By whom judgments and orders to be drawn up.

1. Judgments and orders, whether given or made in Court or in Chambers, or by default, shall be drawn up by the Registrar or under his direction, unless otherwise directed by the Court or a Justice.

As to pronouncement of judgments, see Order of the Court, No. 162, page 155.

Documents to be filed before judgment or order signed.

2. No judgment or order founded, in whole or in part, on a petition, or on affidavits, written admissions, or other written documents, shall be signed until such petition, admissions, affidavits, or other documents, have been filed in the Registry.

Documents to be left with Registrar on bespeaking judgment or order.

3. At the time of bespeaking a judgment or order, the party bespeaking the same shall leave with the Registrar his counsel's brief, if any, and such other documents as may be required by the Registrar for the purpose of enabling him to draw up the same.

Registrar may require party to submit draft.

4. The Registrar may require the party bespeaking a judgment or order to prepare a draft of the same and leave the same in the Registry for his use or assistance, and may accept the draft so prepared and left as his own draft of the judgment or order, with such alterations, if any, as he may think fit.

Time for bespeaking judgment or order.

5. Every judgment or order shall be bespoken, and the requisite documents mentioned in the last preceding Rule but one shall be left with the Registrar, within seven days after the judgment or order is finally given or made by the Court or Justice.

As to judgments, see Order of the Court, No. 162, page 155.

Where judgment or order not bespoken.

6. If any judgment or order is not bespoken, and the requisite documents are not left with the Registrar within the time prescribed by the last preceding Rule, the Registrar may decline to draw up the judgment or order without the direction of the Court or a Justice.

Appointment for settling judgment or order.

7. At the time of delivering out the draft of a judgment or order which, in the opinion of the Registrar, ought to be settled in the presence of the parties, he shall deliver out to the party on whose application the draft has been prepared an appointment in writing of a time for settling the same.

Notice of appointment to be served on opposite party.

8. A notice of the appointment shall be served on the opposite party one clear day at least before the time thereby appointed for settling the draft, and the party serving the notice and the party so served shall attend the appointment, and shall produce to the Registrar counsel's briefs, if any, and such other documents as may be necessary to enable him to settle the draft.

Service of notice of appointment.

9. Service of the notice of appointment shall be effected by leaving it at the place of service of the party to be served, or by transmitting it by post to such party at such place for service.

Proof of service.

10. At the time appointed for settling the draft the Registrar shall satisfy himself, in such manner as he may think fit, that service of the notice of appointment has been duly effected, and for that purpose may require evidence on oath.

As to service; see Order LV.
As to evidence; see Order XXXIV.

Appointment for passing judgment or order.

11. When the draft has been settled by the Registrar, he shall name a time in the presence of the several parties, or else deliver out an appointment in writing of a time for passing the judgment or order; and in the latter case notice of the appointment shall be served by the party to whom the appointment is delivered on the opposite party, and the service shall be proved in the manner prescribed by the last two preceding Rules with reference to an appointment to settle the draft of a judgment or order.

Default in attending appointment with documents.

12. If any party fails to attend the Registrar's appointment for settling the draft of a judgment or order, or fails to produce his counsel's briefs and such other documents as the Registrar may require to enable him to settle such draft, or to pass such judgment or order, the Registrar may proceed to settle the draft, or to pass the judgment or order, in his absence, and the Registrar shall be at liberty to dispense with the production of counsel's briefs, or with the production of such documents or papers as aforesaid, and to act upon such evidence as he may think fit of the actual appearance by counsel of the party failing to attend, or may require the matter to be mentioned to the Court or a Justice.

As to default of appearance generally; see Order XI.

Adjournment of appointments.

13. The Registrar may adjourn any appointment for settling the draft of a judgment or order, or for passing a judgment or order, to such time as he may think fit, and the parties who attended the appointment shall be bound to attend such appointment without further notice.

Settling and passing judgment or order without any appointment.

14. Notwithstanding the preceding Rules of this Order, the Registrar may, in any case in which he may think it expedient so to do, settle and pass any judgment or order, without making any appointment for either purpose and without notice to any party.

Judgments and orders to be filed.

15. Every judgment or order when settled and passed shall be engrossed by the party having the carriage of the judgment or order.

16. (1) Every judgment and order shall be kept in the Registry as a record.

Duplicates.

(2) A duplicate of every judgment or order shall, one clear day after the same has been entered, and in urgent cases sooner if so directed by the Registrar, be signed and sealed by the Registrar, without fee, and delivered to the party having the carriage of the judgment or order ; and whenever any rule or order or the practice of the Court requires the production of a judgment or order, it shall be sufficient to produce the duplicate.

(3) A further duplicate may at any time, with the sanction of the Registrar and on payment of the prescribed fee, be issued on production of the duplicate first issued, or on the Registrar being satisfied of the loss of that duplicate, and that the person applying is properly entitled to it.

(4) A judgment or order shall not be amended except on production of the duplicate or duplicates, or the duplicate last issued, as the case may be, which shall, after the original order has been amended, be also amended in accordance therewith, under the direction of the Registrar, and the amendment in the duplicate shall be sealed under the like direction.

Certificate for special allowance.

17. The Registrar shall, if requested to do so by any party at the time of any attendance before him for the purpose of settling the draft of a judgment or order or of passing a judgment or order certify, for the information of the taxing officer, whether in his opinion any

special allowance ought to be made on taxation of costs in respect of such attendance, or in respect of the preparation of the draft by any party whom he has requested to prepare the same, on the ground that the judgment or order is of a special nature, or of unusual length or difficulty.

As to review of taxation of costs; see Order LIV., r. 15.

When orders need not be drawn up.

18. When an order is made which does not embody any special terms or include any special directions, but merely gives leave to some officer of the Court other than a solicitor to do some act, or merely enlarges the time for taking some proceeding or for doing some act, or merely gives leave—

(*a*) To issue a writ, not being a writ of attachment ; or

(*b*) To amend any writ or other proceeding ; or

(*c*) To enter a judgment or order *nunc pro tunc* ; or

(*d*) To file any document or to take a document off the file ;

or merely directs a clerical mistake or an error appearing in a judgment or order to be corrected, it shall not be necessary to draw up such order unless the Court or Justice so directs ; but the production of a note or memorandum of such order, signed or initialled by the Justice or Registrar (which may be made upon any document filed in the cause or matter) shall be sufficient authority for such enlargement of time, issue, amendment, entry, filing or other act. A direction that the costs of any such order shall be costs in any cause or matter shall be deemed a special direction within the meaning of this Rule.

As to time; see Order LIII.
As to costs; see Order LIV.

ORDER XL.

Relief Against Judgments and Orders.

Matters arising after judgment or order.

1. When facts arise after the giving of a judgment or making of an order which entitle the person against whom the judgment or order is given or made to be relieved from it, or when facts are discovered after the giving of a judgment or making of an order which, if discovered in time, would have entitled the party against whom the judgment or order is given or made to a judgment or decision in his favour, or to a different judgment or order, he may apply to the Court or a Justice for a stay of execution or other appropriate relief ; and the Court or a Justice may grant such relief, and for that purpose may direct such proceedings to be taken, and such questions or issue of fact to be tried or determined, and such inquiries to be made, as are just.

As to setting aside judgment obtained by default of appearance; see Order XI., r. 8.
Of judgment obtained by default of pleading ; see Order XXVI., r. 11.
Judgment obtained by default of appearance at trial; see Order XXVI., r. 11.
As to staying proceedings generally; see Order XLIV.

Entry of satisfaction.

2. Any party against whom a judgment is given may apply to the Court or a Justice for an order directing entry of satisfaction of the judgment to be made, and the Court or Justice may make the order accordingly.

Procedure under this Order exclusive.

3. No proceedings shall be taken for the purpose of obtaining relief from judgments or orders on the ground of facts arising or discovered after the judgment or order, except as by this Order provided.

ORDER XLI.

Attachment and Committal.

1. *General.*

For performance of an act.

1. A judgment or order for the payment of money into Court, or for the performance of a judgment, order, or writ, by which any person is required to do any act other than the payment of money to some person, (*a*) may be enforced by writ of attachment.

A judgment of the High Court may be enforced by execution against the person where it is allowed in a like case in the Supreme Court of the State in which it is sought to enforce the judgment; see H.C.P. Act, s. 26.

When it is intended to enforce obedience to a judgment or order by process of attachment, the judgment or order must be personally served; see Order LV., r. 3.

The fee on sealing a writ of attachment is 5/-.

(*a*) Held by the High Court that an order for the payment of the costs of an appeal is an order for the "payment of money to some person" within the meaning of this rule: *Lysaght Bros. & Co., Ltd.* v. *Falk* (2), (2 C.L.R. 443 [1905]; 11, A.L.R. 445 [1905]).

Judgment to abstain from any act.

2. A judgment or order requiring any person to abstain from doing any act may be enforced by committal.

As to committal for contempt, see Order XLIX.

As to application for committal being made by motion upon notice, see r. 6 *infra*.

Undertakings.

3. An undertaking to do any act other than the payment of money to some person may be enforced in the same manner as a judgment requiring a person to do an act, and an undertaking to abstain from doing an act may be enforced in the same manner as a judgment requiring a person to abstain from doing an act.

In the case of non-performance of an undertaking to pay money to any person, the Court or a Justice may make an order for payment of the money, which may be enforced in the same manner as a judgment for the recovery of money.

As to a solicitor failing to enter an appearance pursuant to an undertaking, see Order X., r. 10.

2. *Attachment.*

Application for leave to issue writ of attachment.

4. A writ of attachment shall not be issued without the leave of the Court or a Justice, to be applied for on notice to the party against whom the attachment is to be issued.

As to return of writ; see Order LII., r. 4.

A party who fails to comply with an order to answer interrogatories or discovery or inspection is liable to attachment; see Order XXIX., r. 19.

As to attachment of solicitor; see Order XXIX., r. 21.

Court may make peremptory order before issue of writ.

5. In the case of non-performance of an undertaking, the Court or a Justice may, in the first instance, instead of directing the issue of a writ of attachment, make a peremptory order for the performance of the act undertaken to be done.

3. *Committal.*

Motion for committal.

6. Applications for committal for disobedience to a judgment or order requiring a person to abstain from doing any act shall be made by motion upon notice, which must be served personally, unless the Court or a Justice authorizes substituted service.

As to judgment or order requiring person to abstain from doing any act, being enforced by committal; see r. 2 *supra*.

As to committal for contempt; see Order XLIX.

As to personal service; see Order LV.

Order XLIX. to apply.

7. The provisions of Order XLIX., relating to committal for contempt of Court shall apply to applications for committal, and to persons committed, for disobedience to judgments or orders.

ORDER XLII.

Actions by and against Firms and Persons carrying on Business in Names other than their own.

Actions by and against firms within the Commonwealth.

1. Any two or more persons claiming or being liable as partners and carrying on business within the Commonwealth may sue or be sued in the name of the respective firms, if any, of which they were partners at the time of the accuring of the cause of action.

As to application of this order to actions between co-partners; see r. 11 *infra*.

Against a person trading as a firm; see r. 12 *infra*.

As to disclosure and order for disclosure of partners' names and addresses; see rr. 2, 4 *infra*.

As to service; see r. 5 *infra*.

As to appearance; see rr. 7, 8 *infra*.

Disclosure of partners' names.

2. When partners sue in the name of their firm, the plaintiffs or their solicitor shall, on demand in writing by or on behalf of any defendant, forthwith declare in writing the names and places of residence of all the persons constituting the firm in whose name the action is brought ; and if the plaintiffs or their solicitors fail to comply with the demand, all proceedings in the action may be stayed upon such terms as the Court or a Justice directs.

Action to continue in name of firm.

3. When the names of the partners are delcared, the action shall proceed in the same manner, and the same consequences in all respects shall follow, as if they had been named as the plaintiffs in the originating proceeding. But all the proceedings shall, nevertheless, continue in the name of the firm.

Order for disclosure.

4. In any case in which partners sue or are sued in the name of their firm under Rule 1 of this Order, any party to the cause may apply to a Justice for an order directing that a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, partners in the firm, shall be furnished in such manner, and verified on oath or otherwise, as the Justice directs.

Service.

5. When persons are sued as partners in the name of their firm under Rule 1 of this Order, the originating proceeding shall be served either upon some one or more of the partners, or at the principal place, within the Commonwealth, of the business of the partnership upon some person having at the time of service the control or management of the partnership business there ; and, subject to these Rules, such service shall be deemed good service upon the firm whether any of the members thereof are beyond the Commonwealth or not. Provided that in the case of a partnership which has been dissolved to the knowledge of the plaintiff before the commencement of the action, the originating proceeding shall be served upon every person within the Commonwealth sought to be made liable.

As to delivery to person served of notice of the character in which he is served; see r. 5 *infra*.

As to appearance; see rr. 8, 9.

As to service of originating proceedings generally; see Order VIII.

Notice in what capacity served.

6. When persons are sued as partners, and the originating proceeding is served as directed by the last preceding Rule, there shall be delivered with it to every person upon whom it is served a notice in writing stating whether he is served as a partner or as a person having the control or management of the partnership business, or in both characters. In the absence of such notice, the person served shall be deemed to be served as a partner.

Appearance of partners.

7. When persons are sued as partners in the name of their firm, they shall appear individually in their own names ; but all subsequent proceedings shall, nevertheless, continue in the name of the firm.

As to no appearance except by partners; see r. 8 *infra*.

As to conditional appearance; see r. 9 *infra*.

As to appearance generally ; see Order X.

No appearance except by partners.

8. When a writ is served under Rule 5 of this Order upon a person having the control or management of the partnership business, an appearance by him shall not be necessary unless he is a member of the firm sued.

Appearance under protest. of person served as partner.

9. Any person served as a partner under Rule 5 of this Order may enter a conditional appearance, denying that he is a partner, but such appearance shall not preclude the plaintiff from duly serving

the firm otherwise than by service upon him, and obtaining judgment against the firm in default of appearance if no partner enters an appearance in the ordinary form.

Execution of judgment against a firm.

10. When a judgment or order is given or made against a firm, execution may issue :—

(*a*) Against any property of the partnership within the Commonwealth ;

(*b*) Against any person who has appeared in the action in his own name, or who has admitted on the pleadings that he is, or who has been adjudged to be, a partner ;

(*c*) Against any person who has been individually served, as a partner, with the writ of summons, and has failed to appear.

If the party who has obtained the judgment or order claims to be entitled to issue execution against any other person as being a member of the firm, he may apply to the Court or a Justice for leave so to do ; and the Court or Justice may give such leave if the liability of the other person is not disputed, or, if such liability is disputed, may order that the liability of that person be tried in any manner in which any question or issue of fact in an action may be tried.

But, except as against any property of the partnership, a judgment against a firm shall not render liable, or release, or otherwise affect, any member thereof who was beyond the Commonwealth when the cause was commenced, and who has not appeared in the cause, unless he has been served within the Commonwealth with the originating proceeding, or the plaintiff has obtained liberty to proceed in the action against him under Order IX.

Order IX. deals with service out of the jurisdiction in specified cases, and for the subsequent proceedings with leave of the Court.

As to trial of issues of fact; see H.C.P. Act, ss. 12, 13 ; Order XXXIII., r. 2 *et seq.*

As to execution, see H.C.P. Act, s. 26.

Application of Rules to actions between co-partners.

11. This Order shall apply to actions between a firm and one or more of its members, and to actions between firms having one or more members in common, provided that the firm or firms carry on business within the Commonwealth. But execution shall not be issued in such actions without leave of the Court or a Justice, and on an application for leave to issue execution all such accounts and inquiries may be directed to be taken and made, and directions given, as are just.

As to inquiries and accounts ; see Order XXXI., r. 1.

Application of Rules to person trading as a firm.

12. Any person carrying on business within the Commonwealth in a name or style other than his own name may be sued in that name or style as if it were a firm name ; and, so far as the nature of the case will permit, all the Rules of this Order relating to proceedings against firms shall apply to any such case.

See notes to rule 1 *supra.*

ORDER XLIIA.

PRACTICE IN ADMIRALTY ACTIONS.

1. Except as by this Order otherwise provided the Rules of the Court relating to the procedure of the Court in its original jurisdiction shall so far as they are respectively applicable apply to Admiralty actions.

1. *General.*

2. The term " Admiralty Action " means any action, cause, suit, or other proceeding instituted in the Court in the exercise of the jurisdiction conferred on it by the *Colonial Courts of Admiralty Act* 1890 and the *Judiciary Act* 1914. Admiralty Action.

3. Admiralty actions shall be commenced by writ of summons. Every such action shall be entitled " In the High Court of Australia in Admiralty." The title " Emperor of India " shall be added to the titles of the Sovereign. To be commenced by writ of summons. Title of action.

4. In Admiralty actions for seamen's or master's wages, two or more persons claiming relief against the same person or property may be joined as plaintiffs. Admiralty actions for wages.

5. Actions for condemnation of any ship, boat, cargo, proceeds, slaves, or effects, or for recovery of any pecuniary forfeiture or penalty, shall be instituted in the name of the King. Crown Admiralty actions.

6. In an Admiralty action *in personam* the defendants may be described as the owners of the ship instead of by their personal names. Title of actions *en personam*.

7. In Admiralty actions *in rem* the description of the *res* shall be in such one of the forms following, as may be applicable, with such variations as circumstances may require, that is to say :— Forms of descriptions of *res*.

(*a*) The Ship ;
or (*b*) The Ship and freight ;
or (*c*) The Ship her cargo and freight ;
or (*if the action is against cargo only*),
(*d*) The cargo *ex* the Ship (*state the name of ship on board of which the cargo now is or lately was laden*) ;
or (*if the action is against the proceeds realized by the sale of the ship or cargo*),
(*e*) The proceeds of the ship ;
or (*f*) The proceeds of the cargo *ex* the Ship (*or as the case may be*).

8. The indorsement of claim on the writ shall be in such one of the forms in the Schedule to this Order as may be applicable. Indorsement of claim.

Account in certain Admiralty actions.

9. In Admiralty actions for seamen's or master's wages, or for master's wages and disbursements or for necessaries, or for bottomry, or any other Admiralty action in which the plaintiff desires an account, the indorsement on the writ may include a claim to have an account taken.

Seamen not to give security in action for wages, &c.

10. A seaman suing in an Admiralty action for his wages or for the loss of his goods or clothes in a collision shall not be required to give security for costs.

2. *Arrest of Property.*

Arrest in Admiralty actions by warrant after affidavit.

11. In Admiralty actions *in rem* a warrant for the arrest of property, which shall be in the form in the Schedule, with such variations as circumstances may require, may be issued by the Registrar at the instance either of the plaintiff or the defendant, at any time after the writ of summons has been issued. But, except by leave of the Court or a Justice, a warrant of arrest shall not be issued until an affidavit by the party or his agent setting forth the particulars hereby prescribed, has been filed, and the following provisions have been complied with, that is to say :—

(*a*) The affidavit shall state the name and description of the party at whose instance the warrant is to be issued, and the nature of the property to be arrested, and that the claim or counter claim has not been satisfied, and that the aid of the Court is required to enforce it ;

(*b*) In an action for wages or of possession the affidavit shall state the national character of the ship, and, if the ship is foreign, that notice of the action has been served upon a consular officer of the State to which the ship belongs, if there is one resident in the place of the Registry in which the writ of summons is issued.

(*c*) In an action for necessaries the affidavit shall state the national character of the ship, the port to which the ship belongs, and that to the best of the deponent's belief, no owner or part owner of the ship is domiciled in the Commonwealth at the time of the commencement of the action ;

(*d*) In an action between co-owners relating to the ownership, possession, employment, or earnings of a ship registered in the Commonwealth, the affidavit shall state the port at which the ship is registered and the number of shares in the ship owned by the party proceeding ;

(*e*) In an action of bottomry, the bottomry bond, and, if it is in a foreign language, also a notarial translation thereof, shall be produced for the inspection and perusal of the Registrar, and a copy of the bond, or of the translation thereof, certified to be correct, shall be annexed to the affidavit.

Arrest without affidavit by leave.

12. The Court or a Justice may in any case, if they or he think fit, allow the warrant to issue, although the affidavit in the last preceding Rule mentioned may not contain all the prescribed particulars. The Court or a Justice may also, in an action for wages against a foreign ship, dispense with the service of the notice, and, in an action of bottomry, with the production of the bond.

3. *Service and Arrest.*

Service when dispensed with in Admiralty actions *in rem*.

13. In Admiralty actions *in rem*, service of the writ of summons or warrant of arrest shall not be required when the defendant or his solicitor agrees to enter an appearance and put in bail, or pay money into Court in lieu of bail.

Service of warrant of arrest in Admiralty actions.

14. In Admiralty actions *in rem* the writ of summons and warrant of arrest shall be served by the Marshal or his officer, and the party issuing the warrant shall, within six days from the service thereof, file the same in the Registry with a certificate of service indorsed thereon.

Mode of service of writ of summons *in rem*. and warrants.

15. In Admiralty actions *in rem*, the service of a writ of summons *in rem*, or warrant against a ship, freight, cargo, or other property, is to be effected as follows :—

(*a*) Upon a ship, or upon freight, cargo, or other property if the cargo or other property is on board the ship, by nailing or affixing the original writ or warrant for a short time on the mainmast or on the single mast of the ship, or on some other conspicuous part of the vessel, and on taking off the process leaving a true copy of it nailed or affixed in its place ;

(*b*) Upon freight, cargo, or other property if the cargo or other property is not on board a vessel, by placing the original writ of summons or warrant for a short time on the cargo or property and on taking off the process leaving a true copy of it thereon ;

(*c*) Upon freight in the hands of any person, by showing the original writ or warrant to him, and leaving with him a true copy of it.

(*d*) Upon proceeds in Court by showing the original writ to the Registrar, and leaving with him a copy of it, which service shall be a sufficient arrest of the proceeds.

When no access to property.

16. If access cannot be obtained to the property on which the writ or warrant is to be served the service may be made by showing it to the person appearing to be in charge of the property and leaving with him a copy of it, and also publishing a copy in some newspaper ordinarily circulating in the locality where the property is.

4. *Appearance.*

Solicitor not entering appearance.

17. A solicitor who fails to enter an appearance in pursuance of his written undertaking so to do, or who fails to put in security in an Admiralty action *in rem*, in pursuance of a like undertaking, shall be liable to attachment.

5. *Pleadings. Discontinuance.*

Delivery of statement of claim in Admiralty actions *in rem*.

18. In Admiralty actions *in rem*, the plaintiff shall, if required to deliver a statement of claim, and unless otherwise ordered by the Court or a Justice, deliver his statement of claim within twelve days from the entry of appearance by the defendant.

Extension or shortening of time.

19. In Admiralty actions the Court or a Justice may extend or shorten the time for pleading to any pleading of the opposite party.

Effect of discontinuancee on consolidated actions.

20. The discontinuance of an Admiralty action by the plaintiff shall not prejudice any action consolidated with it.

6. *Caveats and Releases in Admiralty Actions.*

Caveat against warrant to arrest.

21. A party desiring to prevent the arrest of any property, may cause a caveat against the issue of a warrant for the arrest thereof to be entered in the Registry.

Caveat Warrant Book.

22. For the purpose in the last preceding Rule mentioned, the party shall cause to be filed in the Registry a notice, signed by himself or his solicitor, undertaking to enter an appearance in any action that may be commenced against the property, and to give security in such action in a sum not exceeding an amount to be stated in the notice, or to pay such sum into Court; and a caveat against the issue of a warrant for the arrest of the property shall thereupon be entered in a book to be kept in the Registry, called the Caveat Warrant Book.

Writ to be served on party entering caveat.

23. A plaintiff commencing an action against any property in respect of which a caveat has been entered in the Caveat Warrant Book, shall forthwith serve a copy of the writ upon the party on whose behalf the caveat has been entered, or upon his solicitor.

Security to be given within three days.

24. The party on whose behald the caveat has been entered shall, if the sum in respect of which the action is commenced does not exceed the amount for which he has undertaken, give security in such sum within three days from the service of the writ.

If security not given, action may proceed as on default.

25. After the expiration of twelve days from the filing of the notice in Rule 22 of this Order mentioned, if the party on whose behalf the caveat has been entered has not, within three days from the service of the writ, given security as required by the last preceding Rule, the plaintiff may proceed with the action as upon default of appearance.

Judgment may be enforced by attachment and warrant.

26. If, when the action comes before the Court, the Court is satisfied that the claim is well founded, it may pronounce for the amount which appears to be due, and may enforce payment thereof by attachment against the party on whose behalf the caveat has been entered, as well as by the arrest of the property, if it then is, or thereafter comes, within the jurisdiction of the Court.

Release.

27. Property arrested by warrant in Admiralty actions shall not be released except under the authority of an instrument issued from the Registry, to be called a release.

Caveat against release.

28. A party desiring to prevent the release of any property under arrest, shall file in the Registry a notice, and thereupon a caveat against the release of the property shall be entered in a book, to be kept in the Registry, called the Caveat Release Book.

Payment into Court.

29. Except as hereinafter provided, a party may obtain the release of any property by paying into Court the sum in respect of which the action has been commenced, or giving security for the like sum.

Release of cargo arrested for freight only.

30. Cargo, arrested for freight only, may be released by filing an affidavit as to the value of the freight, and by paying the amount of the freight into Court, or upon an order of the Court or a Justice upon proof that the freight has already been paid.

In salvage actions.

31. In an action for salvage, the value of the property under arrest shall be agreed, or an affidavit of value filed, before the property is released, unless the Court or a Justice otherwise orders.

On giving security.

32. A party who has given security in the sum in respect of which the action has been commenced, or paid such sum into Court, and if the action is one of salvage, has also filed an affidavit as to the value of the property arrested, shall be entitled to a release for the same, unless a caveat against the release is outstanding in the Caveat Release Book.

On consent or discontinuance or dismissal of action.

33. A release may also be issued by the Registrar, unless there is a caveat outstanding in the Caveat Release Book, on a consent in writing being filed, signed by the party at whose instance the property has been arrested, or on discontinuance or dismissal of the action in which the property has been arrested.

To be left with Marshal.

34. The release, when obtained, shall be left with the Marshal by the party taking it out, who shall also at the same time pay all costs, charges, and expenses, attending the care and custody of the property while under arrest ; and the property shall thereupon be released.

Registrar may require Justice's order.

35. The Registrar may refuse to issue a release without the order of a Justice.

Liability for delaying release.

36. A party delaying the release of any property by the entry of a caveat shall be liable to be condemned in the costs and damages occasioned thereby, unless he shows to the satisfaction of the Court or a Justice good and sufficient reason for having done so.

Arrest notwithstanding caveat.

37. Nothing in these Rules shall prevent a solicitor from taking out a warrant for the arrest of any property, notwithstanding the entry of a caveat in the Caveat Warrant Book; but the party at whose instance any property in respect of which the caveat was entered has been arrested shall be liable to have the warrant discharged and to be condemned in costs and damages, unless he shows to the satisfaction of the Court or Justice good and sufficient reason for having so done.

Caveat Payment Book.

38. A book shall be kept in the Registry, called the Caveat Payment Book, in which caveats shall be entered against the payment of money out of Court in Admiralty actions.

Caveat against payment out of Court.

39. A person desiring to prevent the payment of money out of Court in an Admiralty action must file a notice objecting to the payment, and thereupon a caveat shall be entered in the Caveat Payment Book.

Liability for delaying payment.

40. The party at whose instance a caveat payment is entered, shall be liable to be condemned in the costs and damages occasioned thereby, unless he shows to the satisfaction of the Court or Justice good and sufficient reason for entering the caveat.

Address of caveator.

41. If the person entering a caveat is not a party to the action, the notice shall state his name and address, and an address within one mile of the Registry, at which it shall be sufficient to leave all documents required to be served upon him.

Withdrawal of caveats.

42. A caveat may at any time be withdrawn by the person at whose instance it has been filed, on his filing a notice withdrawing it.

Caveats may be overruled.

43. The Court or a Justice may set aside any caveat.

7. *Trial.*

Mode of trial.

44. Admiralty actions shall be tried by a Justice without a jury.

Entry of cause for trial.

45. Notice of trial shall be given before entering the cause or questions or issues for trial; and a cause may be entered for trial, notwithstanding that the pleadings are not closed, provided that notice of trial has been given.

Avoidance of notice of trial.

46. The entry must be made within six days after notice of trial is given; otherwise the notice of trial shall cease to have effect.

Entry for trial by party served with notice.

47. If the party giving notice of trial omits to enter the cause or issues for trial on the day or the day after giving notice of trial, the party to whom notice has been given may, within four days thereafter, enter the same for trial, unless in the meantime the notice has been countermanded.

Trial in default of appearance.

48. In an Admiralty action, if no appearance has been entered, the plaintiff may, at any time after the time limited for appearance, apply to a Justice for leave to enter the action for trial.

In default of pleading.

49. In an Admiralty action, if an appearance has been entered, either party may give notice of trial and enter the action for trial as soon as the last pleading has been delivered, or as soon as the time allowed to the opposite party for delivering any pleading has expired without such pleading having been delivered.

Appointment of early day for trial in Admiralty actions.

50. In Admiralty actions either party may, at any stage of the proceedings, apply to the Court or a Justice for an Order that the trial shall take place on an early day to be appointed by the Court or Justice; and on such application the Court or Justice may appoint that the trial shall take place on any day or within any time which the Court or Justice may think fit; and for such purpose may dispense with giving notice of trial, or may abridge the time or times appointed by these Rules for giving notice of trial or for the delivery of pleadings, or for doing any other act or taking any other proceedings in the action, upon such terms, if any, as may be just.

In case of accounts.

51. In an Admiralty action *in rem*, if the writ of summons has been indorsed with a claim to have an account taken, or if the liability has been admitted or determined and the question is simply as to the amount due, the Justice may, on the application of either party, fix a time within which the accounts and vouchers, and the proofs in support thereof, shall be filed, and at the expiration of that time either party may give notice of trial and enter the action for trial.

Copies of pleadings, &c., to be delivered.

52. The party entering the cause or questions or issues for trial, shall deliver to the proper officer two copies of the whole of the pleadings, if any, and of the issues, or of such other proceedings as show the questions for trial, one of which shall be for the use of the Justice at the trial.

Proof on trial in default of appearance in actions *in rem*

53. Upon the trial of an Admiralty action *in rem* upon default of appearance, the claim must be proved to the satisfaction of the Court.

Affidavit evidence in Admiralty references.

54. In default actions *in rem*, and in references in Admiralty actions evidence may be given by affidavit.

Payment out of Court to be on order only.

55. Money paid into Court in an Admiralty action shall not be paid out of Court except in pursuance of an order of the Court or a Justice.

Tender to be accompanied by payment into Court.

56. In an Admiralty action a party desiring to make a tender in satisfaction of the whole or any part of the adverse party's claim, shall pay into Court the amount tendered by him, and shall file a notice of the terms on which the tender is made.

Acceptance or rejection of tender.

57. Within eight days after the filing of the notice, the adverse party shall file a notice stating whether he accepts or rejects the tender, and if he does not do so, he shall be deemed to have rejected it.

Suspension of proceedings.

58. Pending the acceptance or rejection of a tender, the proceedings in the action shall be suspended.

8. *Motions.*

Copies of affidavits to be served.

59. In Admiralty actions, a copy of every affidavit intended to be used on the motion shall be served with the notice of motion.

9. *References to the Registrar.*

Application of Rules.

60. The following thirteen Rules of this Order shall apply to references to the Registrar, whether the reference is to the Registrar alone, or to the Registrar assisted by a merchant or merchants.

Reference to Registrar and merchants.

61. The Court or a Justice may refer the assessment of damages and the taking of any account to the Registrar, either alone or assisted by a merchant or merchants.

Filing of claim and affidavits.

62. Within twelve days from the day when the order for the reference is made, the claimant shall file his claim and his affidavits verifying the same ; and within twelve days from the day when the claim and affidavits are filed, the adverse party shall file his counter affidavits.

Filing of further affidavits.

63. After the filing of the counter affidavits, six days shall be allowed to either party for filing further affidavits, and after that period no further affidavits shall be filed, unless by order of the Court or a Justice, or by permission of the Registrar.

Time for hearing.

64. Within three days from the expiration of the time allowed for filing the last affidavits, the claimants shall file in the Registry a notice, praying to have the reference set down for hearing, and if he does not do so, the adverse party may apply to the Court or a Justice to have the claim dismissed with costs.

Hearing.

65. At the time appointed for the reference, if either party is present, the reference may be proceeded with ; but the Registrar may adjourn the reference from time to time as he may deem proper.

Witnesses.

66. Witnesses may be produced before the Registrar for examination and the evidence may, on the application of either party, but at the expense in the first instance of the party on whose behalf the application is made, be taken down by a shorthand writer or reporter appointed by the Justice, who shall be sworn faithfully to report the evidence ; and a transcript of the shorthand writer's or reporter's notes, certified by him to be correct, shall be admitted to prove the oral evidence of the witnesses on an objection to the Registrar's report.

Counsel.

67. Counsel may attend the hearing of any reference, but the expenses attending the employment of counsel shall not be allowed on taxation, unless the Registrar is of opinion that the attendance of counsel was necessary.

Report by Registrar.

68. When a reference has been heard, the Registrar shall make a report in writing of the result in the form of a certificate, showing the amount, if any found due, and to whom, together with any further particulars that may be necessary.

Costs.

69. The Registrar may, if he thinks fit, report whether any and what part of the costs of the reference shall be allowed, and to whom.

Notice to parties.

70. When the report is ready notice shall be sent to the parties, and either party may thereupon take up and file the report.

Motion to vary.

71. Within two weeks from the date of the filing of the Registrar's report, either party may give notice of motion to vary the report, specifying the items objected to.

Order thereon.

72. At the hearing of the motion the Justice may make such order thereon as he thinks just, or may remit the matter to the Registrar for further inquiry or report.

Confirmation if no motion to vary.

73. If a notice of motion to vary the report is not filed within two weeks from the date of the filing of the Registrar's report, the report shall stand confirmed.

10. *Appraisement or Sale.*

Appraisement.

74. In Admiralty actions the Court or a Justice may, either before or after final judgment, order any property under the arrest of the Court to be appraised, or to be sold without appraisement, and either by public auction or by private contract.

Sale of perishable property.

75. If the property is deteriorating in value, the Court or a Justice may order it it be sold forthwith.

Without commission in certain cases.

76. If the property to be sold is of small value, the Court or a Justice may, if they or he think fit, order it to be sold without a commission of sale being issued.

Removal of property.

77. The Court or a Justice may, either before or after final judgment, order any property under arrest of the Court to be removed, or any cargo under arrest on board ship to be discharged.

Commissions.

78. The appraisement, sale, and removal of property, the discharge of cargo, and the demolition and sale of a vessel condemned under any Slave Trade Act, shall, except as provided by Rule 76 of this Order, be effected under the authority of a commission which, unless the Court or a Justice otherwise orders, shall be addressed to the Marshal, and executed by the Marshal or his officers.

Return of commissions.

79. The commission shall, as soon as possible after its execution, be filed by the Marshal, with a return setting forth the manner in which it has been executed.

Gross proceeds of sale to be paid into Court.

80. The Marshal shall pay into Court the gross proceeds of sale of any property which has been sold by him, and shall at the same time bring into the Registry the account of sale, with vouchers in support thereof, for taxation by the Taxing Officer, who shall proceed to tax the same.

Taxation of Marshal's expenses.

81. Any person interested in the proceeds may be heard before the Taxing Officer on the taxation of the Marshal's account of expenses, and an objection to the taxation shall be heard in the same manner as an objection to the taxation of a solicitor's bill of costs.

11. *Books, Etc.*

Minute Book.

82. There shall be kept in the Registry a separate book, to be called the "Admiralty Minute Book," in which the Registrar shall enter in order of date, under the head of each Admiralty action, and on a page numbered with the number of the action, a record of the commencement of the action, of all appearances entered, all documents issued or filed, all acts done, and all judgments and orders made in the action, whether made by the Court or a Justice or by consent of the parties.

Inspection of Minute and Caveat Book.

83. Any solicitor may, free of charge, inspect the Admiralty Minute Book, the Caveat Warrant Book, the Caveat Release Book, or Caveat Payment Book.

Inspection of records.

84. The parties to an Admiralty action may, while the action is pending, and for one year after its termination, inspect, free of charge, all the records in the action.

By whom to be made.

85. Except as provided by the two last preceding Rules, no person shall be entitled to inspect the records in a pending Admiralty action without the permission of the Registrar.

After action terminated.

86. In an Admiralty action which is terminated any person may, on payment of the prescribed fee, inspect the records in the action.

12. *Service of Process by Marshal.*

To be left with Marshal with written instructions.

87. Every instrument to be served or executed by the Marshal shall be left with the Marshal by the party at whose instance it is issued, with written instructions for the service or execution thereof.

Verification of service or execution.

88. The service or execution of any instrument by the Marshal or his officer shall be sufficiently proved by his return, which shall state by whom the warrant has been served or executed, and the date and mode of service or execution, and shall be signed by the Marshal. When any instrument issued in an Admiralty action is served by any other person, the service shall be proved by affidavit.

13. *Time.*

Duration of caveat in Admiralty actions.

89. In Admiralty actions a caveat, whether against the issue of a warrant, the release of property, or the payment of money out of Court, shall not remain in force for more than six months from the date thereof.

90. In Admiralty actions every instrument requiring to be served shall be served within twelve months from the date on which it bears date; otherwise the service shall be of no effect. Time for service in Admiralty actions.

14. *Costs.*

91. In an Admiralty action a party claiming an excessive amount, either by way of claim or of set-off or counter-claim, may be ordered to pay all costs and damages occasioned by the excess. Costs of excessive claims in Admiralty action.

92. In an Admiralty action, if a tender is rejected, but is afterwards accepted, or is held by the Court to be sufficient, the party rejecting the tender shall, unless the Court otherwise orders, pay all the costs incurred after the tender is made. Tender improperly rejected in Admiralty action.

93. When the sum in dispute in an Admiralty action does not exceed £50, or the value of the *res* does not exceed £100, one-half only of the ordinary costs on the lower scale shall be allowed. When costs are awarded to a plaintiff, the expression "sum in dispute" means the sum recovered by him in addition to the sum, if any, counter-claimed from him by the defendant; and, when costs are awarded to a defendant, it means the sum claimed from him, in addition to the sum, if any, recovered by him. Costs in small Admiralty cases.

94. The Court or a Justice may, in any Admiralty action, order that half costs only shall be allowed. Half costs in Admiralty actions.

ORDER XLIII.

INSPECTION OF PROPERTY: INTERIM PRESERVATION, CUSTODY, AND MANAGEMENT OF PROPERTY: RECEIVERS: STOP ORDERS.

1. *Interim Preservation, Custody, and Management of Property.*

1. The Court or a Justice may, upon the application of any party to a cause or matter, and upon such terms as are just, make any order that is necessary for the inspection, detention, or preservation, of any property or thing, being the subject-matter of the litigation, or as to which any question may arise therein, and for any such purposes may authorize any person to enter upon or into any land or building in the possession of any party to the cause or matter, and for any such purposes may authorize any samples to be taken, or any observation to be made or experiment to be tried, which is necessary or expedient for the purpose of obtaining full information or evidence. (*a*) (*b*) Inspection, detention, or preservation of property the subject of an action.

As to time for making the application; see r. 7 *infra*.

As to application for inspection by a jury; see r. 3 *infra*.

As to preservation or interim custody of the subject matter of a disputed contract; see r. 4 *infra*.

As to order for sale of perishable goods; see r. 6 *infra*.

As to inspection of documents; see Order XXIX., r. 11.

(*a*) In an action against the Commonwealth for infringement of patent after the statement of claim was filed and before defence, the plaintiffs applied for the nspection of the apparatus used by the defendant. An application for a patent

in respect of the apparatus used by the Commonwealth was subsequently made, and the specification was made public. Held by the High Court that no order for inspection should be granted at that stage of proceedings. *Marconi's Wireless Telegraph Company, Ltd.* v. *Commonwealth* (No. 1) (15, C.L.R. 685 [1912]).

(*b*) *Held* by the High Court (per Griffiths, C. J., and Barton, J., Isaacs, J. dissenting), that where a claim is made by the Crown that inspection should not be granted on the ground that, in the opinion of the Minister of the Crown, such inspection would be deterimental to the public welfare, it is not the Court's duty to concede the claim without any inquiry, but it ought first to ascertain what is the nature of the alleged State secret, and whether facts discoverable on inspection can in any intelligible sense prejudice the public welfare.

Marconi's Wireless Telegraph Company, Ltd. v. *Commonwealth* (*No.* 2), (16, C.L.R. 178 [1913]). Application for special leave to appeal against the decision of the High Court was made to the Privy Council. The application was dismissed (4th July, 1913). The proceedings before the Privy Council were not reported.

Inspection by Justice.

2. Any Justice by whom any cause or matter is heard or tried, with or without jury, or before whom any cause or matter is brought by way of appeal, may inspect any property or thing concerning which any question arises therein.

Inspection by jury.

3. The provisions of Rule 1 of this Order as to inspection shall apply to inspection by a jury, and in that case the Court or a Justice may make all such orders upon the Marshal or other proper officer as are necessary to procure the attendance of the jury at such time and place, and in such manner as the Court or Justice thinks fit.

The Court or Justice shall by the order make such provision as to defraying the expenses of the inspection as is just.

Preservation or interim custody of subject-matter of disputed contract.

4. When a *prima facie* case of liability under a contract is established, the Court or a Justice may make an order for the preservation or interim custody of the subject-matter of the litigation, notwithstanding that there is alleged as matter of defence a right to be relieved wholly or partially from the liability ; or may order that the amount in dispute be brought into Court or otherwise secured.

As to the time at which an application for such an order may be made; see r. 5 *infra.*

As to payment into Court ; see Order XXI.

Application when and how made.

5. An application for an order under the last preceding Rule may be made by the plaintiff at any time ; and may be made upon the pleadings, if his right appears by the pleadings ; or, if there are no pleadings, upon proof of the facts by affidavit or otherwise to the satisfaction of the Court or a Justice.

As to trial without pleadings ; see Order XVI.

Order for sale of perishable goods, &c.

6. The Court or a Justice may, on the application of any party to a cause or matter, make an order for the sale, by any persons named in the order, and in such manner, and on such terms as the Court or Justice thinks desirable, of any goods, wares, or merchandise being the subject of the cause or matter, or as to which any question arises therein, which are of a perishable nature or likely to be injured by keeping them, or which for any other just and sufficient reason it is desirable to have sold at once.

As to time for making applications; see r. 7, *infra.*

Applications for injunction or receiver or for Order under Rule 1 or 6.

7. An application for an injunction or receiver, or for an order under Rule 1 or Rule 6 of this Order, may be made to the Court or a Justice by any party. An application for an injunction or receiver may be made either *ex parte* or upon notice. An application for an order under Rule 1 or Rule 6 may be made upon notice to the opposite party at any time after the commencement of the cause, and, if the party making the application is not the plaintiff, after appearance by him.

Early trial of cause.

8. When an application is made before trial for an injunction or other order, and it appears to the Court or Justice that the matter in controversy in the cause can be most conveniently dealt with by an early trial, without first going into the whole merits on affidavit or other evidence for the purposes of the application, the Court or Justice may, subject to the right of either party to demand a jury, make an order for such trial accordingly, and may direct the trial to be had at any time or place, and in any manner in which a cause may be tried, and in the meantime may make such order as the justice of the case requires.

Parties are not entitled as of right to a jury; see H.C.P. Act, s. 12; Order XXXIII., r. 2.

Order for recovery of specific property, other than land, subject to lien, &c.

9. When an action is brought to recover specific property other than land, and it appears from the pleadings, or, if there are no pleadings, it is made to appear, by affidavit or otherwise to the satisfaction of the Court or a Justice, that the party from whom recovery is sought does not dispute the title of the party seeking to recover the property, but claims to retain it by virtue of a lien, or otherwise as security for any sum of money, the Court or a Justice may at any time order that the party claiming to recover the property be at liberty to pay into Court, to abide the event of the action, the amount of money in respect of which the lien or security is claimed, and such further sum, if any, for interest and costs as the Court or Justice directs, and that, upon such payment into Court being made, the property claimed shall be given up to the party claiming it.

As to trial without pleadings; see Order XVI.

Injunction against repetition of wrongful act or breach of contract.

10. In any action in which an injunction has been or might have been claimed, the plaintiff may, before or after judgment, apply for an injunction to restrain the defendant or respondent from the repetition or continuance of the wrongful act or breach of contract complained of, or from the commission of any injury or breach of contract of a like kind relating to the same property or right, or arising out of the same contract; and the Court or a Justice may grant the injunction, either upon or without terms, as may be just.

Damages for injunction wrongly granted.

11. Every interlocutory order for an injunction shall contain an undertaking by the party at whose instance it is granted to pay to the opposite party any damanges which such opposite party may sustain by reason of the injunction, and which the Court or Justice thinks he ought to pay.

An application for an order for payment of such damages shall be made by motion, and the damages may be ordered to be assessed in any manner in which damages may be assessed in an action.

As to assesment of damages in an action by writ of inquiry; see Order XXXIII., r. 25 *et seq.*

As to enforcing undertakings; see Order XLI., r. 3.

2. *Receivers.*

Receivers—Security by and allowance to.

Form of security.

12. When an order is made directing a receiver to be appointed, the person to be appointed shall, unless otherwise ordered, first give security, to be approved by the Court or Justice, and taken before the Registrar or a commissioner for affidavits, duly to account for what he shall receive as such receiver, and to pay the same as the Court or Justice shall direct ; and the person so to be appointed shall, unless otherwise ordered, be allowed a proper salary or allowance.

As to duty of receiver or manager in possession of property in managing and dealing therewith; see H.C.P. Act, s. 29.

As to liability or receiver or manager to be sued without leave of the Court; see H.C.P. Act, s. 30.

As to time for application for appointment : see r. 7 *supra.*

As to security generally; see Order XXVIII.

Where receiver appointed in Court.

Adjournment into Chambers. to give security.

13. When a judgment or order is pronounced or made in Court by which a person therein named is appointed to be receiver, the Court may adjourn the cause or matter to Chambers, in order that the person named as receiver may give security as in the last preceding Rule mentioned, and may thereupon direct such judgment or order to be drawn up.

3. *Stop Orders.*

Order to prevent transfer or payment without notice to applicant.

14. Any person claiming to be entitled to or to have a charge upon any moneys or securities standing to the credit of a cause or matter in Court may apply to the Court or a Justice for an order to prevent the payment or transfer thereof to any person without notice to him.

Mode of application.

15. Notice of the application must be given to the persons interested in such parts of the moneys or securities as are sought to be affected by the order asked for, but need not be given to the parties to the cause or matter or any other persons, unless they are so interested.

As to procedure by summons; see Order XLVI.

As to service generally; see Order LV.

Costs.

16. The costs of and occasioned by any such application or order shall be in the discretion of the Court of Justice.

As to costs generally; see Order LIV.

ORDER XLIV.

Staying Proceedings.

General authority to stay.

1. The Court or a Justice may, at any time after the institution of any cause or matter, direct a stay of proceedings, either as to the whole cause or matter, or as to any proceedings therein, or as to any proceedings under a judgment or order given or made therein. (*a*)

As to staying proceedings pending the giving of security for costs; see Order XXVIII., r. 14.

As to summons not operating as a stay of proceedings, unless stay included therein; see Order XLVI., r. 6.

As to stay of proceedings pending an appeal, see H.C.P. Act, s. 38; Rules of the High Court, Part II., s. 1, r. 26, and Part II., s. 3, r. 22.

(*a*) In an action against the Commonwealth for infringment of patent the High Court had, on the application of the plaintiffs, made an order for inspection. A notice for a stay of proceedings under the order, pending an application to the Privy Council for special leave to appeal, was made by the defendant, and the circumstances were such that unless the stay was granted the appeal would be rendered nugatory, and that if it was granted simply the whole benefit of the action might be lost to the plaintiffs. Held by the High Court that proceedings should be stayed until the hearing of the application to the Privy Council on the defendants undertaking to expedite the application and to pay such damages, whether legally claimable or not, as the High Court might think just and fair as compensation to the plaintiffs for any damage they might sustain by reason of the stay. *Marconi's Wireless Telegraph Co., Ltd.* v. *Commonwealth* (No. 3), (16 C.L.R. 384 [1913]).

Stay of proceedings on ground of abuse of procedure.

2. An application to stay proceedings on the ground that there is no reasonable or probable cause of action or suit, or that the action or suit or proceeding is vexatious and oppressive, or is an abuse of the procedure of the Court, may be made at any time, and whether the plaintiff does or does not admit the allegations of fact, if any, on which the application is founded.

As to striking out pleadings; see Order XVII., rr. 30, 31.

Stay of proceedings.

3. The Court or a Justice may stay the proceedings in any cause or matter improperly instituted in the name of any person by a next friend.

As to proceedings in the name of an infant or person of unsound mind by his next friend; see Order II., rr. 12, 14, 15.

Withdrawing juror.

4. When at the trial of a cause before a Justice with a jury a juror is withdrawn with the consent of the parties, the withdrawal shall have the effect of an order by consent for the staying of all proceedings in the cause or matter, except so far as the Court at the time of the withdrawal, and with the consent of the parties, otherwise orders.

Staying action until costs paid.

5. When an action is discontinued or dismissed for want of prosecution, or judgment of nonsuit is entered, if, before payment of the costs, a subsequent action is brought for the same, or substantially the same, cause of action, the Court or a Justice may order that proceedings in the subsequent action shall be stayed until such costs have been paid.

As to giving security for costs when a second action is brought for the same cause of action; see Order XXVIII., r. 10.

ORDER XLV.

CONSOLIDATION.

Consolidation of causes or matters.

1. Causes or matters in the Court may be consolidated by order of the Court or a Justice if it appears that substantially the same question is involved in all the causes or matters, or that the decision in one cause or matter will determine the others. The application may be made by any person who is a party to two or more of the causes or matters.

As to payment into Court in consolidated action ; see Order XXI., r. 8.
As to consolidation when proceedings by information of *quo warranto*; see Order XLVII., r. 39.

ORDER XLVI.

CHAMBERS.

1. *Jurisdiction in Chambers.*

General jurisdiction.

1. The following matters may be heard and determined by a Justive in Chambers, that is to say :—

(1) Any application which by any Act or by Rules of Court is authorized to be made to a Justice, and is not specifically required to be made to a Justice in Court ;

(2) Applications for payment or transfer to any person of any money or securities standing to the credit of any cause or matter where there has been a judgment or order declaring the rights of the applicant, or where the title of the applicant depends only upon proof of the identity, or of the birth, marriage, or death, of particular persons ;

(3) Applications for payment or transfer to any person of any money or securities standing to the credit of a cause or matter, when the nominal amount or value of either the money or the securities proposed to be dealt with does not exceed £500, exclusive of interest ;

(4) Applications for payment to any person of the interest or dividends on any money or securities standing to the credit of a cause or matter, whether to a separate account or otherwise ;

(5) Applications relating to the investment or disposition of money or securities in Court ;

(6) Applications for orders on the further consideration of any cause or matter, when the order to be made is for the distribution of any fund or property ;

(7) Applications in a cause or matter for or relating to the sale of property by auction or private contract, and as to the manner in which the sale is to be conducted, and for payment into Court and investment of the purchase money ;

(8) Applications for directions as to the management of any property under the control of the Court.

As to application for payment of transfer of money or securities out of Court; see r. 3 *infra*.
As to further consideration; see Order XXXIII., r. 22.

2. *Procedure in General.*

Applications to be made by summons unless *ex parte*.

2. Every application made to a Justice in Chambers shall, except as hereinafter mentioned, be made by summons, signed by a Justice or the Registrar or other proper officer, and sealed with the office seal. The summons must be served on the opposite party.

As to *ex parte* applications in general; see r. 4 *infra*.

As to signing and sealing of summons; compare H.C.P. Act, s. 4.

As to service of summons; see r. 5 *infra*.

On hearing of summons, evidence may be by affidavit; see H.C.P. Act, s. 20.

The fee on sealing an originating summons, a summons for directions or any other summons, is 5/-.

Certain *ex parte* applications to be by summons.

3. Every application for payment or transfer of money or securities out of Court made *ex parte* shall be made by summons.

Ex parte applications in general.

4. Other *ex parte* applications in a pending cause or matter, and applications for orders nisi, may be made without summons. But the Justice may, upon any application made *ex parte*, require a summons to be taken out, or a memorandum of the order asked for to be filed.

As to appeals from refusal of *ex parte* applications; see Rules of the High Court, Part II., s. 1, rr. 1 to 6.

Service of summons.

5. Every summons shall be served two clear days before the return day thereof, unless the Court or a Justice allows a shorter period of service.

Provided that a summons for time only may be served on the day previous to the return thereof, and that a summons signed, by a Justice may be made returnable at any time.

As to service of proceedings generally; see Order LV.

As to what days are reckoned in computing the time for service; see Order LIII.

No stay unless so ordered by a Justice.

6. A summons shall not operate as a stay of proceedings unless a stay is included therein by order of a Justice.

As to stay of proceedings generally; see Order XLIV.

What matters to be included in the same summons.

7. Any party making an application at Chambers in a cause or matter may include in one and the same summons all matters upon which he then desires the order or directions of the Justice in the cause or matter; and upon the hearing of the summons the Justice may make any such order, and give any such directions, relative to or consequential on the matter of the application, as are just.

As to summons for directions; see Order XV.

Adjournment to Court or Chambers.

8. Any application may, if the Justice thinks fit, be adjourned from Chambers into Court.

Any application made in Court which might have been made at Chambers may be adjourned from Court into Chambers.

Signature of Justices' Order.

9. An order made by a Justice in Chambers and signed by the Registrar and sealed with the office seal shall be sufficiently authenticated.

ORDER XLVII.

CERTIORARI : MANDAMUS : PROHIBITION : QUO WARRANTO : WRIT OF ASSISTANCE.

1. *General.*

Application, how made.

1. Applications for writs of Certiorari, Mandamus, or Prohibition, or for leave to exhibit informations of Quo Warranto, or for relief of like nature to Mandamus or Quo Warranto, may be made to the Court or a Justice. The application shall be, in the first instance, for an order calling on the parties interested in resisting the application to show cause why the writ should not be issued, or the information filed, or other relief given, except in the case of applications by a Crown Law officer *ex officio* for a writ of Certiorari or leave to file an information of Quo Warranto, in which case the order shall, if asked, be absolute in the first instance : Provided that the Court or Justice may in its or his discretion, in any case in which it appears necessary for the advancement of justice, grant an order absolute in the first instance for a writ of Certiorari, Mandamus, or Prohibition.

The fee on sealing a writ of *Mandamus, Certiorari, Habeas Corpus,* or Prohibition is £1.

Order to be returnable before Full Court.

2. Orders to show cause shall be to show cause before a Full Court, unless the matter appears to be one of urgency, in which case the Court or Justice may make the order returnable before a single Justice in Court or Chambers.

Title of affidavits.

3. Affidavits intended to be used on the application shall be entitled " In the High Court of Australia," without any other title.

As to affidavits generally; see Order XXXV.

Title of proceedings.

4. The order to show cause and all subsequent proceedings shall be entitled " The King against " the judicial or other authority or other person to whom the writ is proposed to be directed, or against whom the information is proposed to be exhibited, " *Ex parte*" the applicant.

In the case of a writ of Certiorari, Mandamus, or Prohibition, which is proposed to be directed to a judicial or public authority, the authority shall be described by his or their name of office, and, in the case of justices in a court of summary jurisdiction, they shall be described as the justices at the place where the court is held.

The applicant shall, in the case of applications for writs of Mandamus or relief of like nature, and of applications for writs of Prohibition, be called the prosecutor, and, in the case of applications for informations of Quo Warranto or relief of like nature, the relator.

Order absolute.

5. An order absolute need not be served, but the costs of service thereof may be allowed in the discretion of the taxing officer, if the writ is not actually issued or the information is not actually exhibited.

Costs.

6. When the order is made absolute the Court or a Justice may, except as otherwise provided by these Rules, dispose of the costs of the proceedings either by the final judgment or by a separate order.

2. *Certiorari.*

Time and notice.

7. An order nisi for a writ of Certiorari to remove a judgment, order, or other proceeding of an inferior Court or tribunal, or of justices, shall not be granted unless it is made within six months after the date of the judgment, order, or other proceeding nor unless it is proved upon affidavit that the applicant has given six days' notice of the intended application to the Court, justice, or other person or persons by or before whom the judgment, order, or other proceeding was made or taken, or to two of them if more than one.

As to computation of time limited by this rule in respect of notice of application; see Order LIII.

Objections to be stated in order.

8. Any mistake or omission in any judgment, order, or other proceeding, which is intended to be relied upon as a ground for quashing the judgment, order, or proceeding, shall be stated in the order nisi; otherwise an objection on account of the omission or mistake shall not be allowed.

Service.

9. In the case of orders to show cause why a writ of Certiorari should not be issued addressed to justices in a court of summary jurisdiction, service of the order on the clerk of the court shall be sufficient.

As to service generally; see Order LV.

Security for costs.

10. A writ of Certiorari to remove a judgment or order of any Court or tribunal shall not be issued, except on the application of a Crown Law officer, until the applicant has given security in the sum of Fifty pounds conditioned to prosecute the writ with effect at his own cost without delay, and to pay to the party in whose favour the judgment or order was given or made, in the event of its being confirmed, such costs, if any, as the Court shall order him to pay.

As to issue of an order absolute for *certiorari* in the first instance at the request of a Crown Law Officer; see r. 1 *supra*.

As to security in general; see Order XXVIII.

The fee on sealing a writ of *certiorari* is £1.

Order to quash in first instance.

11. When cause is shown against an order nisi for a writ of Certiorari to bring up a judgment or order, the Court, if it directs the writ to issue, may by the same order direct that the judgment or order shall be quashed on return without further order; and in that case no security need be given as required by the last preceding Rule, and a memorandum to that effect shall be indorsed upon the writ by the officer by whom it is issued.

In any such case the judgment or order shall be quashed, upon being returned to the Court, without further order.

When no cause shown.

12. When cause is not shown against an order nisi for a writ of Certiorari to bring up a judgment or order, or when the order is absolute in the first instance, the applicant shall apply to the Court or a Justice for an order to quash the judgment or order. Such application shall be made upon notice to the parties interested in supporting the judgment or order.

As to granting an order abolute in first instance; see r. 1 *supra*.

3. *Mandamus.*

Prosecutor to be named.

13. An order nisi for a writ of Mandamus or for relief of a like nature, shall not be granted except upon the application of some person who is interested in the relief sought, and the applicant must state by his own affidavit that the application is to be made at his instance as prosecutor.

As to costs, see r. 6 *supra* ; 23 *infra*.

Persons to show cause.

14. The Court or Justice may direct that the order nisi shall be addressed to, and served upon, any person who, in the opinion of the Court or Justice, ought to have notice thereof ; and any person who, in the opinion of the Court or Justice, would be affected by the issue of the peremptory writ may show cause against the order nisi, and, if he does so, shall be liable to costs as if the order had been addressed to him.

Form of writ.

15. Unless otherwise ordered by the Court or Justice, every writ of Mandamus shall command the person to whom it is addressed to do the act in question, or show cause why he has not done it.

But the Court or Justice may direct that the command shall be peremptory in the first instance.

The fee on sealing a writ of *mandamus* is £1.

Time for return of writ.

16. Unless otherwise ordered by the Court or Justice, the writ shall be returnable within the same time after service as is allowed for appearance in the case of a writ of summons.

As to return to writ; see r. 19 *infra*.
As to peremptory writ; see rr. 22, 23.
As to times allowed for appearance to a writ of summons; see Order V., r. 14.

Service.

17. When a writ of Mandamus is directed to one person only, the original writ must be personally served upon him by delivering it to him.

When the writ is directed to two or more persons, it shall be personally served upon all of them but one in the manner prescribed for personal service of writ, and shall be served upon the remaining one by delivering the original writ to him.

As to personal service generally; see Order LV.
As to service of writ of summons; see order VIII., r. 2.

Service on justices or corporate bodes.

18. When a writ of Mandamus is directed to justices or to a corporation, or to public authorities, it shall be served on so many of the justices or of the officers or members of the corporation or public authority as are competent to do the act commanded, unless by law some other mode of service is sufficient.

Return.

19. The persons to whom a writ of Mandamus is directed shall, within the time allowed by the writ, file the writ in the Registry, together with a certificate, written thereon or annexed thereto, and signed by them, setting forth that they have done the act commanded by the writ, or else setting forth the reason why they have not done so.

As to the time for the return; see r. 16 *supra*.

Service.

20. A copy of the return shall be served upon the prosecutor on the same day on which it is filed.

Pleading to return.

21. If the return does not certify that the act commanded has been done, the same proceedings shall be had and taken, and within the same time, as if the return were a defence in an action in which the prosecutor was the plaintiff and the person to whom the writ is directed was the defendant, and had pleaded the return as his defence.

Peremptory writ.

22. If the questions of fact and law, if any, raised by the return are determined in favour of the prosecutor by judgment of the Court or otherwise, the prosecutor shall be entitled to a peremptory writ of Mandamus, commanding the persons to whom the first writ was directed to do the act therein commanded; and such writ shall be awarded by the judgment, if any, or, if there is no judgment, by a separate order.

Costs when perepmtory writ awarded in first instance, or on obedience.

23. When a peremptory writ is awarded in the first instance, the Court or Justice shall, at the time of granting the writ, direct by and to whom the costs of the proceedings shall be paid.

When a peremptory writ is not awarded in the first instance, and the return to the writ certifies that the person to whom it is addressed has done the act commanded by the writ, an application for an order for the costs of the proceedings may be made at any time after the return is filed, not being later than the fourth day of the Sittings of a Full Court held next after the day on which the return is filed.

The application shall be made to the Court or Justice by whom the writ was awarded.

Proceedings in nature of interpleader.

24. When upon an application for a writ of Mandamus it appears that some person other than the prosecutor claims that the person to whom it is proposed to direct the writ shall do some act inconsistent with the act which the prosecutor claims to have done, the person to whom the order nisi or writ is directed may apply to the Court or a Justice for an order that the last-named person be substituted for him in all subsequent proceedings up to the issue of a peremptory writ of Mandamus; and the Court or Justice may make such order on the application as is just.

Time.

25. An application for a writ of Mandamus, or an order in the nature of a Mandamus, to a judicial tribunal to enter a minute of adjournment and hear a matter, shall be made within two months of the date of the refusal to hear, or within such further time as is, under special circumstances, allowed by the Court or Justice.

Mandamus by order.

26. In any case in which the Court may direct the issue of a peremptory writ of Mandamus, the command may be expressed in an order of the Court without the issue of a writ, which order shall have the same effect as peremptory writ of Mandamus.

4. *Prohibition.*

Pleadings in Prohibition.

27. The Court of Justice may in any case, instead of directing the issue of a writ of Prohibition, direct the prosecutor to deliver to the opposite party a statement of claim setting forth the facts upon which his claim to the writ is founded ; and thereupon the same proceedings shall be had and taken in all respects as on a statement of claim in an action.

As to application for writ; see rr. 1, 2.
As to statement of claim; see Order XIX.

Proceeding on judgment.

28. If judgment is given for the prosecutor, the judgment shall include a direction that a writ of Prohibition shall issue.

The fee payable on sealing a writ of prohibition is £1.

Writ of Procedendo.

29. When a writ of Prohibition has been issued, and it is afterwards made to appear to the Court or Justice that relief ought to be given against the judgment or order by which the writ was awarded on any ground on which relief might be given against a judgment in an action, the Court or Justice may direct that a writ, called a writ of Procedendo shall be issued commanding the judicial tribunal to which the writ of Prohibition was issued to proceed to hear or determine the matter in question or othersise proceed therein as if the writ of Prohibition had not been issued.

Prohibition by order.

30. The Prohibition may be expressed in an order of the Court without the issue of a writ, which order shall have the same effect as a writ of Prohibition.

5. *Quo Warranto.*

Relator to be named.

31. Upon an application for an order for leave to exhibit an information of Quo Warranto, or for relief of a like nature, the applicant must state by his own affidavit that the application is to be made at his instance as relator.

The Court or a Justice may allow a new relator to be substituted for the original relator, on such terms as to costs or otherwise as are just.

As to application for an order; see rr. 1, 2 *supra.*

Objections to be stated in order nisi.

32. Every objection intended to be made to the title of the defendant or person called on to show cause shall be stated in the order nisi, and no objection not so stated shall be raised on the return of the order nisi, or in the information, without the leave of the Court or Justice.

Security for costs.

33. An information shall not, without the leave of the Court, given in open Court be filed until the applicant has given security in the sum of Fifty pounds conditioned to prosecute the information with effect, and to pay to the defendant such costs, if any, as the Court or a Justice shall order.

As to security in general; see Order XXVIII.

Form of information.

34. The information shall set forth the facts relied on by the relator as invalidating the title of the defendant to the office in question in the same manner as in a statement of claim.

As to pleading generally; see Order XVII.
As to statement of claim; see Order XIX.

Signature and service of information.

35. The information shall be in the name of the Attorney-General or the relator, as the case may be, on behalf of His Majesty, and shall be signed by the Attorney-General or relator.

A copy of the information shall be served upon the defendant, or, if at the return of the order nisi he appeared by solicitor, then upon his solicitor.

Defence and subsequent proceedings.

36. The defendant shall plead to the information within the same time and in the same manner as if the information were a statement of claim in an action, and thereupon the same proceedings shall be taken in all respects as if the proceedings by information were an action in which the relator was the plaintiff and the defendant was the defendant.

As to pleading after statement of claim; see Orders XVII., XX.

Judgment.

37. If judgment is given for the Crown, the judgment shall award that the defendant be ousted from the office usurped by him.

Disclaimer.

38. The defendant may, if he thinks fit, disclaim the office in question. Such disclaimer shall be signed by the defendant and attested by a commissioner for affidavits, and shall be filed, and a copy thereof shall be served on the relator within the time allowed for delivering a defence.

Costs.

The relator shall thereupon, unless the Court or a Justice otherwise orders, be entitled to enter judgment of ouster with costs, including the costs of the order giving leave to exhibit the information.

As to time allowed for delivering a defence; see Order XX., r. 6.
The fee payable on filing a disclaimer of office by defendant is £1

Consolidation.

39. When proceedings by information of Quo Warranto, or for relief of a like nature, are pending against several persons for usurpation of offices of the same nature, and upon the same grounds of objection, the Court or a Justice may direct the proceedings to be consolidated, as in the case of actions, and for that purpose may make such orders as are just.

But an order for consolidation or stay of proceedings against any defendant shall not be made upon the application of a defendant, unless he undertakes to enter a disclaimer in the event of judgment being given for the relator in the proceeding which is not stayed.

As to consolidation of causes or matters; see Order XLV.
As to stay of proceedings; see Order XLIV.

6. *Writ of Assistance.*

To issue by order of Justice.

40. A writ of assistance may be issued upon the order of a fiat of a Justice, to be granted upon an *ex parte* application.

The fee payable on sealing a writ of assistance is 10/-.

ORDER XLVIII.

Habeas Corpus.

Order for production of person in confinement for examination or trial.

1. The Court or a Justice may by order, and without the issue of a writ of Habeas Corpus, direct the production of any person in confinement for the purpose of his examination as a witness, or for his trial, at a time and place to be named in the order.

The fee payable on sealing a writ of *Habeas Corpus* is £1.

How applied for.

2. Applications for writs of Habeas Corpus, or for orders for the production of persons in confinement for the purpose of examination or trial, may be made to the Court or a Justice *ex parte*.

The affidavits upon which the application is made shall be entitled "In the High Court of Australia" without other title, except in the case of applications for orders for the production of persons for examination as witnesses in causes or matters pending in the Court, in which case they shall also be entitled in the cause or matter.

How granted.

3. The Court or Justice may make an order absolute in the first instance for the issue of the writ or production of the person, or may make an order calling upon the person who would be required to obey the writ or order, if granted, to show cause why it should not be issued or made. The order and all subsequent proceedings shall be entitled "The King against" the person to whom the writ or order is directed, except in the case of orders for the production of persons as witnesses which shall be entitled in the cause or matter.

Service.

4. Writs of Habeas Corpus, and orders for production directed to person charged by law with the custody of persons in lawful custody or confinement, may be served either personally or by leaving the original

with a servant or officer of the person to whom the writ or order is directed at the place where the person in question is confined or detained.

Other writs of Habeas Corpus must be served personally.

When a writ of Habeas Corpus is directed to more persons than one, it shall be served in the same manner as a writ or Mandamus directed to several persons.

Together with the writ there shall be served a notice, directed to the person to whom the writ is addressed, and pointing out the acts to be done by him in obedience to the writ, and the consequences of making defualt.

As to manner in which a writ of *mandamus*, directed to several persons is served; see Order XLVII., r. 17.

As to manner of effecting personal service; see Order LV., r. 1.

Returns to writs of Habeas Corpus.

5. The person to whom a writ of Habeas Corpus is directed shall, at the time and place specified therein, make his return to the writ, which shall be indorsed upon or attached to the writ, and shall set out all the causes of the detention of the person named in the writ. The return shall be filed.

Amendment of return.

6. The return may be amended by leave of the Court or a Justice.

As to power of the Court or Justice to amend; see H.C.P. Act, ss. 23, 24, and Order XXVII.

Proceedings on return.

7. Upon the return of the writ the return shall be read, and a motion shall then be made for the disposition of the person therein named, or for amending or quashing the return.

Discharge without writ.

8. When an order to show cause has been made, the Court or Justice may, on the return of the order, direct the discharge or other disposition of the person in question without the issue of a writ of Habeas Corpus, and any such order shall be as effectual as if it had been made on the return of a writ.

ORDER XLIX.

Committal for Contempt of Court.

Contempt in the face of the Court.

1. When a person is alleged to be guilty of contempt of Court, committed in the face of the Court, or in the hearing of the Court, the Court may, by verbal order, direct him to be arrested and brought before it forthwith, or the presiding Justice may issue a warrant under his hand for the arrest of the accused person.

When the accused person is brought before the Court, the Court shall cause him to be informed orally of the nature of the contempt with which he is charged, and shall require him to make his defence to the charge, and shall after hearing him proceed, either forthwith or

after adjournment, to determine the matter of the charge, and shall make such order for the punishment or discharge of the accused person as is just.

The accused person shall be detained in custody until the charge is disposed of, unless the Court allows him to be discharged on bail.

As to attachment and committal; see Order XLI.

In other cases.

2. In cases other than those in the last preceding Rule mentioned application for punishment for contempt of Court shall be made by motion, upon notice to the accused person, for an order that he be committed to prison for his contempt.

As to disobedience of witness to order for attendance; see Order XXXIV., r. 3

Form of notice.

3. The notice of motion shall specify the nature of the contempt of which the accused person is alleged to be guilty.

It shall be entitled in the cause or matter, if any, with reference to which the contempt is alleged to have been committed, or, if it is not alleged to have been committed with reference to any particular cause or matter, shall be entitled "The King against" the accused person, naming him.

Service.

4. The notice of motion shall be served personally unless the Court or Justice otherwise orders.

As to manner of affecting personal service; see Order LV., r. 1.

Warrant.

5. When a notice of motion for the committal of a person for contempt has been filed, if it is made to appear to a Justice that the accused person is likely to abscond or otherwise withdraw himself from the jurisdiction of the Court, the Justice may by warrant under his hand direct that the accused person shall be arrested and detained in custody until he gives security in such sum as the Justice directs to appear in person and answer the charge and submit to the judgment of the Court.

The warrant shall be directed to the Marshal.

As to security; see Order XXVIII.

Interrogatories may be administered.

6. On the hearing of the motion the Court may order the accused person to answer on oath, within four days, interrogatories to be exhibited to him touching his contempt.

The answer to the interrogatories shall be made by affidavit.

As to interrogatories and answers; see Order XXIX.

As computation of time; see Order LIII.

Adjournment.

7. When the accused person is ordered to answer interrogatories, the hearing of the motion shall be adjourned for a sufficient time to allow the answer to be made and filed.

Punishment.

8. Upon the hearing of the motion the Court may impose a fine instead of ordering the accused person to be committed to prison, or may impose a fine in addition to ordering his committal; and, when it imposes a fine, may order that he be imprisoned, or further imprisoned, until the fine is paid.

Order of committal.

9. When the accused person is ordered to be committed to prison, the order of committal shall specify the prison to which he is to be committed.

Discharge.

10. The Court may order the discharge of a person committed to prison for contempt notwithstanding that the time for which he was ordered to be committed has not expired.

Costs.

11. The costs of an application for committal shall be in the discretion of the Court, whether an order for committal is made or not.

ORDER L.

Appeals in Matters relating to Patent and Trades Marks.

How instituted.

1. Appeals from decisions of the Commissioner of Patents or Registrar of Trade Marks, or Law Officer under the Trade Marks Act, shall be instituted by notice of motion, which shall be filed in the Principal Registry, and shall be served on the Commissioner, or Registrar, or Law Officer, and upon such other persons, and in the same manner, as if the appeal were from a final judgment of a Justice of the High Court, and shall be brought within the time if any (*a*) prescribed by regulations under the Patents Act or Trade Marks Act respectively or if no time is so prescribed within the same time as is prescribed for appeals from a final judgment of a Justice of the High Court.

(*a*) The regulations under the Patents Act, 1903-1909, and the Trade Marks Act, 1905-1912, prescribe "twenty-one days after the date of the decision appealed against or such further time as the Court on application made within twenty-one days allows."

Sitting.

2. If the motion is to be made before the Full Court it shall, unless otherwise ordered by the Court or a Justice, be set down for hearing at the first Sittings of the Court appointed to be held at the Principal Seat of the Court after the expiration of one month from the service of the notice of motion. If the motion is to be heard by a single justice in Court it shall be set down for hearing on a day appointed for that purpose. Ten days' notice shall be given by the appellant to the respondent of the day for which the appeal has been set down to be heard.

Cross appeals.

3. It shall not be necessary for a respondent to give notice of cross appeal, but, if a respondent intends upon the hearing of an appeal to contend that the decision appealed from should be varied, he shall, four days before the day for which the appeal has been set down to be heard, give notice of his intention to such of the parties as may be affected by such contention. The omission to give such notice shall not diminish the powers of the Court when hearing the appeal, but may, in the discretion of the Court, be ground for an adjournment of the hearing, or for a special order as to costs.

Documents to be forwarded to Principal Registry.

4. The Commissioner or Registrar, as the case may be, shall forthwith after service of the notice of motion on him forward to the Principal Registrar of the High Court copies of all such documents as may be necessary for the hearing of the appeal.

Papers for Justices.

5. Four days at least before the day for which the appeal has been set down to be heard, the appellant shall lodge in the Registry situated in the place where the appeal is to be heard, a copy of the documents referred to in the last preceding Rule for the Justice, or each of the Justices, by whom the appeal is to be heard. The cost of copies of unnecessary documents will not be allowed.

ORDER LI.

Revocation of Patents.

Title.

1. A petition for revocation of a patent shall be addressed to the High Court.

Form.

2. Every petition shall contain a statement, as brief as the nature of the case will allow, of the material facts on which the petitioner relies, but not of the evidence by which they are to be proved, nor, except so far as they are material, the contents of documents. The petition shall, when necessary, be divided into paragraphs, numbered consecutively, and each containing, as nearly as may be, a separate allegation. Dates, sums, and numbers may be expressed in figures or in words. Signature of counsel shall not be necessary, but the petition shall be signed by the solicitor of the party, or by the party himself, if he proceeds in person.

Persons to be served.

3. At the foot of every petition, and of every copy thereof, a statement shall be made of the persons, if any, intended to be served therewith, and, if no persons intended to be served, a statement to that effect shall be made at the foot of the petition.

Filing.

4. Every petition shall be filed.

Notice to appear.

5. Upon the filing of the petition the proper officer shall, if it is intended to be served, indorse thereon a notice requiring the parties respondents to the petition to enter an appearance in the cause within the same time, and at the same place, as if the petition were a writ of summons in an action.

A copy of such notice sealed with the office seal shall be indorsed upon every copy of the petition intended for service.

Service.

6. The service of a petition shall be effected by serving the party with a copy of the petition, indorsed as aforesaid, in the same manner, in which a writ of summons in an action is required to be served, except that the original petition and memorandum need not be produced.

As to service of writ of summons; see Order V., rr. 12-14.

Appointment of time for hearing.

7. At any time after the time limited for appearance either party may apply to a Justice to appoint a day and place for hearing the petition.

Dismissal for want of prosecution.

8. If the petitioner does not within six months after he is first entitled to do so apply for the appointment of a time and place for hearing the petition, any respondent may apply to the Court or a Justice to dismiss the petition for want of prosecution, and, on the hearing of such application, the Court or Justice may order the petition to be dismissed accordingly, or make such other order, and on such terms as the Court or Justice may seem just.

ORDER LIA.

APPEALS IN MATTERS RELATING TO LAND TAX AND INCOME TAX.

1.—*Land Tax Appeals.*

Appeal by notice of motion.

1. A taxpayer who is dissatisfied with an assessment made by the Commissioner of Land Tax, or in the case of an assessment of land situated in one State only, by a Deputy Commissioner, may within thirty days after the service upon him by post of notice of the decision of the Commissioner or Deputy Commissioner appeal from such decision.

The appeal shall be instituted by notice of motion, which shall specify the Court to which the appeal is to be brought, and state fully the grounds of appeal, and shall be served on the Commissioner or Deputy Commissioner. A copy thereof shall be filed in the proper office of that Court.

Hearing.

2. The appeal shall be set down for hearing on a day appointed by the Court to which it is brought for the hearing of such appeals. Ten days notice shall be given by the appellant to the respondent of the day for which the appeal has been so set down.

Documents for hearing.

3. The Commissioner, or Deputy Commissioner, as the case may be, shall forthwith after service of the notice of motion on him forward to the proper officer of the Court to which the appeal is brought copies of all such documents as may be necessary for the hearing of the appeal.

2.—*Income Tax Appeals.*

Appeal by notice of motion.

4. A taxpayer who is dissatisfied with an assessment made by the Commissioner of Taxation may within thirty days after the service by post of notice of the decision of the Commissioner appeal from such decision.

The appeal shall be instituted by notice of motion, which shall specify the Court to which the appeal is to be brought, and state fully the grounds of appeal, and shall be served on the Commissioner. A copy thereof shall be filed in the proper office of that Court.

Effect of treating notice of objection as an appeal.

5. When a taxpayer, in pursuance of Section 37 of the *Income Tax Assessment Act* 1915, asks the Commissioner to treat his notice of objection as an appeal, the Commissioner shall forthwith forward the notice of objection to the Court to which the appeal is to be brought, and shall give notice to the taxpayer that he has done so. Such last-mentioned notice shall have the same operation, and thereupon

the same proceedings shall be taken as if the taxpayer had on the date thereof served a notice of appeal to the same effect under the last preceding Rule.

Hearing.

6. The appeal shall be set down for hearing on a day appointed by the Court to which it is brought for the hearing of such appeals. Ten days notice shall be given by the appellant to the respondent of the day for which the appeal has been set down to be heard.

Documents for hearing.

7. The Commissioner shall forthwith after service of the notice of motion on him forward to the proper officer of the Court to which the appeal is brought copies of all such documents as may be necessary for the hearing of the appeal.

3.—*General.*

Papers for Justice.

8. Four days at least before the day for which an appeal has been set down to be heard, the appellant shall lodge in the proper office of the Court a copy of the necessary documents for the use of the Court. The cost of copies of unnecessary documents will not be allowed.

General practices as to special cases to apply.

9. Except as in this Order otherwise provided, the provisions of Order XXXII. shall be applicable to Special Cases stated under the provisions of the *Land Tax Assessment Act* 1910-14 or of the *Income Tax Assessment Act* 1915.

ORDER LII.

THE MARSHAL AND OTHER OFFICERS CHARGED WITH SERVICE AND EXECUTION OF PROCESS.

Process to be returned.

1. The Marshal and every other officer charged with the execution of process shall return the process into Court if required by the party by whom it is sued out.

The same fees are to be taken as by the practice of the Supreme Court of the State in which the proceeding is taken or the act is done or authorised and required to be taken by the Sheriff in respect of a like proceeding or act in a cause pending in that Court.

Mode of making returns.

2. The return shall be made by filing the original process in the Registry, with a certificate indorsed thereon or annexed thereto, and signed by the Marshal or his deputy, or such other officer as aforesaid, and setting forth what has been done under the process.

Return of non est inventus.

3. When a writ of summons or other process is delivered to the Marshal or other officer specially appointed in that behalf for service upon any person, and the Marshal or officer is unable to find the person to be served, he shall, if so required by the party by whom the process was delivered to him, return the process into Court in the same manner as in the case of process of execution, with a certificate setting forth the inability.

Return of writ.

4. No order shall issue for the return of any writ, or to bring in the body of a person ordered to be attached or committed; but a notice to the Marshal by the solicitor of the party at whose suit the writ was issued, or the order for attachment or committal was obtained, or by the party himself if he sues or appears in person, requiring the Marshal to return the writ or to make his report or to bring in the body within a specified time, shall, if not complied with, entitle the party to apply for an order for the attachment of the Marshal.

The time specified in the notice shall not be less than eight days.

Any such notice may be given in vacation as well as at any other time.

As to attachment of persons; see Order XLI.
As to committal; see Order XLIX.
As to computation of time; see Order LIII.

Attendance of Marshal in Court.

5. The Marshal or his deputy shall attend all sittings of a Full Court, and all sittings of the Court for the trial of causes, and of any Justice of the Court when sitting in Court on any occasion when he is required by the Justice or Court to do so.

Or his officers.

6. Whenever, by reason of distance or any other sufficient cause, the Marshal or his deputy cannot conveniently execute any instrument in person, he shall employ some fit person as his officer to execute it.

ORDER LIII.

TIME.

Exclusion of Sundays and Court holidays.

1. When any limited time less than six days from or after any date or event is appointed or allowed for doing any act or taking any proceeding, Sundays and Court holidays shall not be reckoned in the computation of the time.

As to Court holidays; see Order LVI., r. 4.

Time expiring on close day.

2. When the time for doing any act or taking any proceeding expires on a Sunday or Court holiday, and by reason thereof the act or proceeding cannot be done or taken on that day, the act or proceeding shall, so far as regards the time of doing or taking it, be held to be duly done or taken if done or taken on the next day which is not a Sunday or Court holiday.

As to Court holidays; see Order LVI., r. 4.

No delivery of pleadings in vacation.

3. Pleadings shall not be delivered or amended in the vacations unless directed by the Court or a Justice.

As to delivery of pleadings; see Order XVII., *et seq.*
As to vacations; see order LVI., r. 3.

Vacation not to be reckoned in time for delivery, &c., of pleadings.

4. The time of the vacations shall not be reckoned in the computation of the times appointed or allowed by these Rules for filing, amending, or delivering any pleading, unless so directed by the Court or a Justice.

The time for vacations is reckoned in calculating the time within which notice of motion for new trial must be served; see Part II., sec. 1, r. 22.

As to vacations; see Order LVI., r. 3.

Time for giving security for costs when not to be reckoned.

5. The day on which an order for security for costs is served, and the time thenceforward until and including the day on which the security is given, shall not be reckoned in the computation of the time allowed for pleading, answering interrogatories, or taking any other proceeding in the cause.

As to security for costs; see Order XXVIII., r. 9.

Power of Court or Justice to enlarge or abridge time.

6. The Court or a Justice may enlarge or abridge the time for doing any act or taking any proceeding allowed or limited by these Rules, or allowed or limited for the like purpose by any order of the Court or a Justice, whether so allowed by way of enlargement or othwerwise, upon such terms, if any, as the justice of the case requires ; and any such enlargement may be ordered although the application for the same is not made until after the expiration of the time originally allowed or limited. (*a*)

(*a*) *Per Griffiths*, C.J. : Rule 6 of Order LIII. does not apply to an appeal from the Supreme Court of the State, and the High Court has no jurisdiction to extend the time for giving notice of such an appeal : *Lever Bros. Ltd.* v. *G. Mowling & Son* (5 C.L.R. 510 [1908]) ; 14 A.L.R. 73 [1908]). Held by the High Court that the provisions of Section V., r. 1 of the Appeal Rules do not make this rule applicable to the filing of notices of appeal under the Appeal Rules, so as to give the High Court jurisdiction to enlarge or abridge the time for filing copy of a notice of appeal. *Ryan* v. *Rounsevell* (10 C.L.R. 186 [1910]).

This decision was approved in the case of *Delph Sing* v. *Karbowsky* (18 C.L.R. 197 [1914]). The High Court held that where a plaintiff gave notice of appeal from a decision of the Supreme Court of a State, but did not give security within three months after service of the notice of appeal, as required by Rule 12, Section 3, of the Appeal Rules, the time for giving security could not be enlarged under this rule.

Time of day for service.

7. Service of pleadings, notices, summonses, orders, rules, and other proceedings, shall be effected before four o'clock in the afternoon, except on Saturdays, when it shall be effected before twelve o'clock noon. Service effected after four o'clock in the afternoon on any week day except Saturday shall, for the purpose of computing any period of time subsequent to the service, be deemed to have been effected on the following day. Service effected after twelve o'clock noon on Saturday shall for the like purpose be deemed to have been effected on the following Monday.

As to service generally; see Order LV.
As to service of originating proceedings ; see Order VIII.

Notice after delay of one year.

8. When no proceeding has been taken in a cause for one whole year from the time when the last proceeding was taken, any party who desires to proceed shall, before taking any step in the cause, give a month's notice to every other party of his intention to proceed. When six years have elapsed from the time when the last proceeding was taken, no fresh proceeding shall be taken without the order of the Court or a Justice, which may be made either *ex parte* or upon notice. A summons on which no order has been made shall not be deemed a proceeding within this Rule ; but notice of trial, although avoided by non-entry or countermanded, shall be deemed such a proceeding.

ORDER LIV.

COSTS.

Costs to be in the discretion of the Court.

1. Subject to the provisions of these Rules, the costs of and incident to all proceedings in the Court shall be in the discretion of the Court or a Justice: Provided that, when any cause or issue is tried with a jury, the costs shall follow the event, unless the Justice by whom the cause or issue is tried, or the Court, for good cause otherwise orders.

As to security for costs; see Order XXVIII., r. 9.
As to security on appeal; see H.C.P. Act, ss. 35, 36.

Costs of issues to follow event.

2. When several issues, whether of fact or law, are raised in a cause, the costs of the several issues respectively, both of law and fact, shall, unless otherwise ordered, follow the event.

Costs of cause removed from inferior Court.

3. When a cause is removed from an inferior Court which had jurisdiction in the cause, the costs in the Court below shall be costs in the cause.

As to *certiorari*; see Order XLVII., rr. 7-12.

Costs of solicitor guardian *ad litem*.

4. When a solicitor acts as the guardian *ad litem* of an infant, or is appointed to be guardian *ad litem* of a person of unsound mind, in any cause or matter, the Court or a Justice may direct that the costs to be incurred in the performance of the duties of such office shall be borne and paid either by the parties to the cause or matter, or some of them, or out of any fund in Court in which the infant or person of unsound mind is interested, and may give directions for the repayment or allowance of such costs as the justice and circumstances of the case require.

As to appointment of guardian *ad litem*; see Order II., rr. 12-16.

Costs out of estate.

5. The costs occasioned by an unsuccessful claim or unsuccessfu resistance to any claim to any property shall not be paid out of the estate unless the Court or a Justice so orders.

Distribution not to be delayed by difficulties as to some shares.

6. When some of the persons entitled to a distributive share of a fund are ascertained, and difficulty or delay has occurred or is likely to occur in ascertaining the persons entitled to the other shares, the Court or a Justice may order or allow immediate payment of their shares to the persons ascertained without reserving any part of those shares to answer the subsequent costs of ascertaining the persons entitled to the other shares; and in any such case such orders may be made for the ascertainment and payment of the costs incurred down to and including such payment as the Court or Justice thinks just.

Set-off of damages and of costs in same cause or matter.

7. When in any cause or matter any sum of money is ordered to be paid by one party to another, whether for debt, damages, or costs, and in the same cause or matter the party to whom the sum is to be paid is ordered to pay any sum, whether for debt, damages, or costs,

to the party by whom the first-mentioned sum is to be paid, one of the sums shall be set-off against the other without any order for that purpose, and the balance, if any, shall be payable by the party by whom the larger sum is ordered to be paid, and to the other party.

As to the costs of different issues following the event; see r. 2, *supra*.
As to set off in different causes of matter; see r. 8, *infra*.

Set-off in different causes or matters.

8. Money recovered by one party against another party in any cause or matter shall not be set-off against money recovered by the latter party against the former in another cause or matter, except subject to the liens of their respective solicitors upon the sum so recovered, but may be set-off subject to such liens.

Costs of incidental applications.

9. Unless the Court or a Justice otherwise orders, the costs of a motion or application in a cause shall be deemed to be part of the costs of the cause of the party in whose favour the motion or application is determined, unless the motion or application is unopposed, in which case the costs of both parties shall be deemed to be part of their costs of the cause, unless the Court or a Justice otherwise orders.

Costs of motion not disposed of.

10. When a motion or application or other proceeding is ordered to stand over to the trial, and no order is made at the trial as to the costs of the motion, application, or proceeding, the costs of both parties of such motion, application, or proceeding shall be deemed to be part of their costs of the cause.

As to costs reserved ; see r. 11, *infra*.

Costs reserved.

11. When the costs of any motion or application or other proceeding in a cause or matter are reserved by the Court or Justice, no costs of such motion, application, or proceeding shall be allowed to either party without the order of the Court or Justice.

Costs when further proceedings become unnecessary.

12. When for any reason the further prosecution of any cause or matter becomes unnecessary except for the purpose of determining by whom the costs of the cause or matter should be paid, any party may apply to the Court or a Justice to determine that question, and thereupon the Court or Justice may make such order as is just.

Costs of unnecessarily expensive proceedings.

13. When a party takes proceedings of an unnecessarily expensive character, the Court may order the costs incurred by the proceedings so far as they are in excess of the costs which would have been incurred by proceedings of a less expensive character, to be borne and paid by the party by whom the proceedings are taken, although he is otherwise entitled to the costs of the cause or matter. (*a*)

(*a*) Preparing typewritten or printed copies of documents or of evidence for an appeal is not taking a proceeding within the meaning of Order LIV., r. 13 (Order XLIV., r. 13, 1903) : *Peacock* v. *Osborne* (No. 2) (13 A.L.R. 254 [1907]).

Amount of costs.

14. The fees payable to barristers and solicitors in respect of business transacted by them in the High Court or the offices thereof shall, unless otherwise ordered, be taxed, allowed, and certified by the Registrar or a Deputy Registrar, or some other officer duly appointed for the

purpose, and shall be allowed in accordance, as nearly as may be, with the scale of costs applicable, under the practice of the Supreme Court of the State in which the business is transacted, to business of an analogous nature transacted in that Supreme Court or the offices thereof. (*a*) *to* (*f*).

(*a*) Under Section 148 of the Victorian Justices Act, 1890, the amount of costs which can be allowed in the Supreme Court upon an order to review a decision of a Court of Petty Sessions, is limited to £20. Held by the High Court that this rule does not make that section applicable to appeals to the High Court by the way of orders to review from Courts of Petty Sessions exercising Federal jurisdiction: *Lyons* v. *Smart* (6 C.L.R. 285 [1908]; 14 A.L.R. 619 [1908]).

(*b*) Where the respondent had been ordered to pay a part of the petitioner's taxed costs, the fee paid to the petitioner's counsel in respect of the whole petition may, on taxation be allowed in full, if the amount is a fair and reasonable fee in respect of the matter on which the petitioner succeeds: *Chanter* v. *Blackwood* (No. 3) (1 C.L.R. 456 [1904]).

(*c*) Held on a motion to rescind an order granting special leave to appeal from the Supreme Court, that the order was properly made, the question raised being an important question of law, and of general interest to the mercantile community, that the attendance of the appellant at the taxation of costs, after the judgment of the Full Court appealed from, was not an act of acquiescence that would perempt the appeal, and that a delay of two months in applying for leave to appeal, the respondent not having been prejudiced thereby, was not, under the circumstances, a sufficient ground for rescinding the order of leave: *Ex parte Britz* (4 S.R. (N.S.W.) 116 [1904]; 21 W.N. (N.S.W.) 18 [affirmed]); *Donohoe* v. *Britz* (1 C.L.R. 391 [1904]).

(*d*) Where the hearing of an appeal other than on a question of abstract law has been transferred, by order of the Court acting on its own initiative and not at the request of parties, to a State other than that of origin, the successful party to whom costs were given, may in a proper case be allowed the costs and expenses of sending the managing clerk of their Solicitors in the State of origin to instruct counsel at the hearing of the appeal. The matter is primarily one for the exercise of the taxing officer's discretion, but this discretion will be freely reviewed by the Court employing its own knowledge of the special circumstances of the case. Principles suggested for the guidance of the taxing officer in arriving at the amount of costs to be allowed: *Western Australian Bank* v. *Royal Insurance Co.* (7 C.L.R. 385 [1908]: 14 A.L.R. 189 [1908]).

(*e*) Upon an appeal to the High Court the appellants costs begin with the instructions to appeal and the costs of obtaining counsel's opinion as to the advisability of an appeal, though allowable as between solicitor and client, are not allowable as between party and party: *City Bank of Sydney* v. *McLaughlin* (10 C.L.R. 362 [1909]).

(*f*) On the taxation of costs of proceedings in the High Court to determine the amount of compensation payable for land acquired by the Commonwealth under the Lands Acquisition Act 1906, the Taxing Officer has an unfettered discretion to allow a fee to counsel to view the land acquired, and the question he should consider is whether, under the circumstances of the particular case, the fee was necessary or proper for the attainment of justice: *The Minister for Home Affairs* v. *Beale* (22 C.L.R. 98 [1916]).

15. Every taxation of costs shall be subject to review by a Justice (*a*)

(*a*) The Registrar, on taxation of costs as between party and party, disallowed the costs of a third counsel in an appeal to the High Court, and on a summons for a review of taxation, the Court refused to direct a review and dismissed the summons with costs: *Donohoe* v. *Britz* (No. 2) (1 C.L.R. 662 [1904]). Review o Taxation.

ORDER LV.

SERVICE.

Personal service.

1. When any document is required to be served personally, service shall, unless otherwise provided by Rules of Court, be effected by delivering to the person to be served a copy of the document to be served, and, if that document is not the original document, at the same time showing him the original if he so requires, or by delivering to him an office copy of the document to be served.

As to service of originating proceedings; see Order VIII.
As to service out of jurisdiction; see Order VIII.
As to delivery of pleadings; see Order XVII., r. 7.
As to time of day for service; see Order LIII., r. 7.

Substituted service.

2. In any case in which personal service of any document is required by these Rules or otherwise, if it is made to appear to the Court or a Justice that prompt personal service cannot be effected, the Court or Justice may make such order for substituted or other service, or for the substitution of notice for service, by letter, public advertisement, or otherwise, as is just.

Service so effected in accordance with any such order shall have the same operation as personal service (*a*)

As to substituted service of originating proceedings; see Order VIII., rr. 8, 9.

(*a*) Held by the High Court that an appeal to the High Court could not be entertained in the absence of service, personal or substituted, of the notice of appeal upon a wife : *Machin* v. *Machin* (21 C.L.R. 127 [1916]).

Service of judgments and orders.

3. When it is intended to enforce obedience to a judgment or order by process of attachment, the judgment or order must be served personally upon the person against whom the process is to be sought.

Except as aforesaid, personal service of a judgment or order, shall not be necessary, nor need the original be shown unless required by the party served.

As to attachment and committal; see Orders XLI., XLIX.

Mode and time of service when not personal.

4. Any document of which personal service is not prescribed by an Act or by these Rules, shall be sufficiently served if left within the prescribed hours, if any, at the address for service of the person to be served as defined by these Rules with any person resident at or belonging to that place.

As to indorsement of address for service; see Order I., rr. 3, 4.
As to time of day for service; see Order LIII., r. 7.

Service of notices from Court.

5. Notices sent from any office of the Court may be sent by post ; and the time at which the notice so posted would be delivered in the ordinary course of post shall be considered as the time of service thereof, and the posting thereof shall be a sufficient service.

Service when no appearance or noaddress for service.

6. When no appearance has been entered for a party (*a*), or when a party or his solicitor, as the case may be, has omitted to give an address for service as required by these Rules, all documents in respect of which personal service is not prescribed by an Act or by these Rules may be served by filing them in the Registry.

Any document so filed shall be stuck up in the Registry (*b*), and shall remain so stuck up for fourteen days.

As to delivery of pleadings by filing; see Order XVII., r. 7.

As to computation of time; see Order LIII.

(*a*) A petition to the Supreme Court of Victoria by a husband for the disolution of marriage which was undefended, was dismissed. Held by the High Court that an appeal to the High Court could not be entertained in the absence of service, personal or substituted, of the notice of appeal upon the wife : *Machin* v. *Machin* (21 C.L.R. 127 [1916]).

(*b*) Where in an action the defendant has not entered an appearance, the order for taking accounts and for foreclosure in the event of non-payment of the amount found to be due must be stuck up in the Registry, in addition to being filed there : *Australian Temperance and General Mutual Life Assurance Society, Ltd.* v. *Holland* (20 C.L.R. 145 [1915]).

Service upon solicitor of party formerly appearing in person.

7. When a party after having sued or appeared in person has given notice in writing to the opposite party or his solicitor, through a solicitor, that that solicitor is authorized to act in the cause or matter on his behalf, all documents which ought to be delivered to or served upon the party on whose behalf the notice is given shall thereafter be delivered to or served upon that solicitor at the address given in the notice.

Service not to be effected on Sunday, Good Friday, or Christmas Day.

8. No instrument, except a warrant to arrest property in an action *in rem*, shall be served on a Sunday, Good Friday, or Christmas Day.

Affidavits of service.

9. Affidavits of service shall state the time when, the place where, the person by whom, and the manner in which, the service was effected.

As to affidavits generally; see Order XXXV.

As to affidavits of service of subpoena; see Order XXXIV., r. 16.

ORDER LVI.

Sittings and Vacations.

Full Court.

1. Sittings of a Full Court shall be held in each year on days to be appointed for that year by Rule of Court, and on such other days as are specially appointed by Rule of Court.

Any act or proceeding which by any Act or practice is required to be done or taken in or with reference to terms shall be done or taken in or with reference to the sittings of a Full Court annually appointed as aforesaid.

Sittings before single Justices.

2. Sittings of the Court before single Justices shall, if there is any business to be transacted, be held at such places and on such days as are appointed by Rule of Court, and on such other days as a Justice thinks fit to sit in Court.

Long vacations.

3. There shall be two vacations in each year, the winter vacation of four weeks, beginning on a day in June to be annually appointed by Rules of Court, and the summer vacation of eight weeks, beginning on a day in December to be annually appointed in like manner.

Pleadings must not be delivered or amended in vacation; see Order LIII., r. 3.

Vacation is not to be reckoned in time for filing, amending, or delivery of pleadings; see Order LIII., r. 4.

Holidays.

4. The following days shall be observed as holidays of the Court, that is to say:—New Year's Day, Good Friday, Easter Eve, Easter Monday, Easter Tuesday, Christmas Day, the three days following Christmas Day, the Birthday of the Sovereign, the Birthday of the Heir Apparent, and such other days as are appointed by Rules of Court.

Office hours.

5. The several offices of the Court shall be open on every day in the year except Sundays and Court holidays, and shall be open from nine o'clock in the forenoon until four o'clock in the afternoon, except in the vacations, when they shall be open from nine o'clock in the forenoon until one o'clock in the afternoon, and except on Saturdays when they shall close at twelve o'clock noon.

ORDER LVII.

General Provisions.

1. *Seals*: *Process*: *Office Copies.*

Use of Great Seal.

1. The Great Seal of the Court shall be affixed to all Commissions issued by authority of the Court or a Justice, whether under the authority of an Act or of Rules of Court, to all exemplifications of proceedings in the Court, to all writs of Certioriari, Mandamus, Prohibition, and Habeas Corpus, and writs of inquiry, and to all documents issued from the Court for use beyond the Commonwealth, not being writs or other documents for service on a party to a cause, and to such other documents as the Court or a Justice in any case directs.

As to the seal of the High Court and duplicate thereof; see H.C.P. Act, s. 3.
As to the use of seals; see H.C.P. Act, s. 4.
As to office seals; see r. 2, *infra*.

Office seal.

2. At every Registry there shall be kept a Seal, called the Office Seal, which shall bear the words "High Court of Australia," and also the word "Registry," prefixed by the word "Principal" in the case of the Principal Registry, and by the name of the place at which the Registry is situated in the case of a District Registry. The Office Seal shall be affixed to all writs, process, judgments, and orders, and to all other documents which are authorized to be sealed, except as provided by the last preceding Rule.

Sealing writs &c.

3. Any person desiring to sue out any writ, process, or commission authorized by an Act or by Rules of Court may prepare it, and present it to a Registrar for issue, and, if it appears that the document is in proper form, and that the person presenting it is entitled to sue it out, the Registrar or his clerk shall sign it and seal it with the proper seal, and it shall thereupon be deemed to be issued.

As to the use of seal; see H.C.P. Act, s. 4.

Office copies.

4. Any person entitled to have a copy of any record of the Court, or of any document filed in a Registry, may apply to the Registrar for an office copy thereof, and the Registrar shall thereupon cause a copy of the record or document to be made and examined, and to be marked with the words "Office Copy," and sealed with the Office Seal. Every such copy shall be deemed to be a certified copy within the meaning of any law relating to certified copies.

As to fee payable for office copies; see Scale of Fees, sub-title "Copies."

Meaning of Registrar.

5. The term Registrar in these Rules includes a District Registrar, Deputy Registrar, or other officer discharging the duties of the Registrar, or of a District Registrar or Deputy Registrar.

2. *General.*

Non-compliance with Rules not to render proceedings void.

6. Non-compliance with any Rule of Court, or with any rule of practice for the time being in force, shall not render any proceedings void unless the Court or a Justice so directs; but the proceedings may be set aside either wholly or in part as irregular, or amended, or otherwise dealt with in such manner and upon such terms as the Court or Justice thinks fit.

No proceedings are invalidated by any formal defect or irregularity; see H.C.P. Act, s. 24.

As to amendment; see H.C.P. Act, ss. 23, 24.

Application to set aside for irregularity. when allowed.

7. An application to set aside any proceeding for irregularity shall not be allowed unless it is made within a reasonable time, or if the party applying has taken any fresh step after knowledge of the irregularity.

In cases not provided for, Justice may give directions.

8. When a party desires to take any step in a cause or matter, and the manner or form of procedure is not prescribed by Rules of Court or by the practice of the Court the party may apply to a Justice for directions, and any step taken in accordance with the directions given by the Justice shall be deemed to be regular and sufficient.

Solicitor to act for party.

9. Whenever by Rules of Court any act is required to be done by, or to, or with reference to a party, then in the case of a party who sues or appears by solicitor, the act shall be done by, or to, or with reference to, his solicitor, unless it is expressly provided that it shall be done by, or to, or with reference to, the party in person.

10. The following Regulations shall be observed with respect to printed documents :—

1. The document shall be printed on cream wove white foolscap folio paper, in pica type, leaded, with an inner margin about three-quarters of an inch wide, and an outer margin about two inches and a half wide, and every tenth line shall be numbered in the margin.

2. The document shall be printed by direction of the party on whose behalf it is to be filed or lodged.

3. Unless otherwise ordered by the Court or a Justice the expense of printing documents required to be printed shall be allowed as costs of the party on whose behalf they are required to be filed or lodged.

4. The party printing shall on demand in writing furnish to any other party any number of printed copies not exceeding ten upon payment therefor at the rate of 2d. per folio for one copy and 1d. per folio for every other copy.

Forms.

11. The Forms in the Appendix to these Rules shall be used for the purposes to which they are respectively applicable, with such variations as circumstances require.

PART II.—APPELLATE JURISDICTION.

APPEAL RULES.

SECTION I.

Appeals from Justices of the High Court and New Trials.

1. *Appeals.*

Appeals to be by way of rehearing.

1. Appeals to a Full Court from judgments of Justices of the High Court, whether in Court or Chambers, shall be by way of rehearing.

As to power of Full Court to receive further evidence; see r. 10 *infra*.

As to expediting hearing; see r. 28 *infra*.

As to inspection by a Justice of property or thing when cause or matter is on appeal; see Order XLIII., r. 2.

Place for hearing appeals.

2. Unless otherwise directed by the Court or a Justice, appeals shall be heard at the seat of Government of the State in a Registry whereof the cause is pending. The Court or a Justice may direct that any appeal shall be heard at the seat of Government of some other State.

As to sittings of the Full Court; see Order LVI., r. 1.

Mode of instituting appeals.

3. Appeals shall be instituted by notice of appeal, which shall be served and filed as hereinafter provided ; and no petition, case, or other formal proceeding other than the notice of appeal shall be

necessary. The appellant may by the notice of appeal appeal from the whole or any part of the judgment appealed from, and the notice of appeal shall state whether the whole or part only of the judgment is complained of, and in the latter case shall specify the part complained of. The notice of appeal shall state shortly the grounds on which the appellant intends to rely.

As to power of High Court to make rules prescribing the times and manner of instituting appeals; see H.C.P. Act, s. 37.

As to security not being required except under order of the High Court; see H.C.P. Act, s. 35.

As to stay of proceedings pending appeal; see H.C.P. Act, s. 38.

As to appeal by personal representative on the death of a party to a judgment see H.C.P. Act, s. 39.

To whom notice to be given.

4. The notice of appeal shall be served upon all parties directly affected by the appeal, and it shall not be necessary to serve parties not so affected; but the Full Court may direct notice of appeal to be served on all or any parties to the cause or matter, or upon any person not a party, and in the meantime may postpone or adjourn the hearing of the appeal upon such terms as are just, and may give such judgment and make such order as might have been given or made if the persons served with such notice had been originally parties. The notice of appeal may be amended at any time as the Full Court thinks fit.

As to amendment generally; see H.C.P. Act, ss. 23, 24; and Order XXVII.

As to service; see Order LV.

Time.

5. The notice of appeal must be served within the times (*a*), (*b*), (*c*) following, respectively, that is to say:—

(1) If the appeal is from a final judgment, within twenty-one days from the date of the judgment;

(2) In any other case within ten days (*d*) from the date of the judgment or order; or,

(3) In either case within such extended times as the Court or a Justice allows.

The said periods shall be reckoned from the date when the judgment or order was pronounced, or, in the case of the refusal of an application, from the date of the refusal.

The times of the vacations shall be reckoned in the computations of the said periods.

In this Rule the term "final judgment" includes any judgment, decree, order, or sentence, by which the rights of the parties are finally concluded with respect to the matters in question in the cause or matter, or any of them, not being a decision upon a mere matter of procedure. (*e*)

(*a*) Order LIII., r. 6 (Rules of the High Court, 1903, Part I., Order XLV., r. 6) does not pply to an appeal from the Supreme Court of a State and the High Court has no jurisdiction to extend the time for giving notice of such an appeal: *Lever Bros., Ltd.* v. *Mowling & Son* (5 C.L.R. 510 [1908]).

(*b*) A notice of appeal was during vacation, when the offices of the High Court are open till one o'clock, handed to an Officer of the Court at three o'clock in the afternoon on the last day of filing. Held that the copy of the appeal was not filed within the prescribed time: *Ryan* v. *Rounsevell* (10 C.L.R. 176 [1910]).

(*c*) Through inadvertence on the part of the defendant's solicitor, notice of appeal to the High Court from the judgment of the Supreme Court of a State, an appeal from which, to the High Court lay as of right, was not given within the prescribed time. Held, that in the special circumstances of the case special leave to appeal should be granted: *Russell* v. *Russell* (24 C.L.R. 19 [1917]).

(*d*) An order made by a Justice of the High Court dismissing a suit as frivolous and vexatious is not a final judgment within the meaning of r. 5 of the Appeal Rules Section 1, and, therefore, notice of appeal from such order must be filed within ten days from the date of the order, as required by rule 5, sub-section 2: *Roberts* v. *Roberts & Moffatt* (7 C.L.R. 566 [1908]).

(*e*) *Roberts* v. *Roberts & Moffatt*, (7 C.L.R. 566 [1908]).

Notice to Registrar.

6. The appellant shall, within the time prescribed by the last preceding Rule for serving the notice of appeal, file a copy of the notice in the Registry of the High Court in which the case is pending. And upon such service and filing the appeal shall be deemed to be duly instituted.

The fee payable on filing a copy of notice of motion instituting an appeal is 5/-.

Appeals from refusal of *ex parte* applications.

7. When an *ex parte* application has been refused by a single Justice, the application may be renewed *ex parte* by way of appeal to a Full Court.

The application may be made at any sitting of a Full Court held within fourteen days, from the date of the refusal, or, if a Full Court is not sitting on the last of those days, at any time not later than the first day of the next sittings of a Full Court, or within such extended time as the Court allows. (*a*), (*b*)

As to computation of time, see Order LIII.

(*a*) See note to r. 5 (*d*) *supra*; *Roberts* v. *Roberts & Moffatt* (7 C.L.R. 566 [1908]).

(*b*) As to enlargement or abridgement of time, see *Ryan* v. *Rounsevell* (10 C.L.R. 176 [1910]).

Length of notice.

8. Notice of appeal from a final judgment shall be for the first sitting of a Full Court held after the expiration of twenty-one days from the institution of the appeal, unless the respondent consents to take shorter notice. In other cases the notice of appeal shall be for the first sitting of a Full Court held after the expiration of twenty-one days from the institution of the appeal, unless the respondent consents to take shorter notice.

As to what constitutes a final judgment; see r. 5, *supra*.

As to computation of time; see Order LIII.

Time for setting down.

9. Every appeal, not being an application by way of renewal of an *ex parte* application which has been refused, shall, unless the Court otherwise directs, be set down for hearing ten days at least before the day for which the notice is given.

As to appeals from refusal of *ex parte* applications; see r. 7, *supra*.

As to computation of time, see Order LIII.

Amendment: Further evidence.

10. The Full Court shall have all powers and duties as to amendment and otherwise of the Court or Justice appealed from, and shall have full discretionary power to receive further evidence upon questions of fact, which evidence may be taken either by oral examination in Court, by affidavit, or by deposition taken before an examiner or commissioner. Such further evidence may be given without special leave except upon appeals from final judgments, and, in any case, as to matters which have occurred after the date of the decision from which the appeal is brought.

Upon an appeal from a judgment after the trial or hearing of a cause or matter upon the merits, such further evidence, save as to matters subsequent as aforesaid, shall not be admitted except on special grounds. (*a*)

As to powers and duties of the Court as to amendment; see H.C.P. Act, ss. 23, 24, and Order XXVII.

As to evidence; see H.C.P. Act, s. 16, *et seq.*

As to orders and examination of witness; see H.C.P. Act, s. 19, and Order XXXIV.

As to evidence by affidavit, see H.C.P. Act, s. 20, and Order XXXV.

As to final judgments, see r. 5 ,*supra.*

(*a*) On an appeal to the Full Court of the High Court from the judgment of a Justice of that Court, the appellant applied for leave to call further evidence. The Court being of the opinion that further evidence should be taken, set aside the judgment and ordered a new trial on the terms that the appellant should pay the costs of the first trial of the appeal: *Buzacott* v. *Cyclone Pty., Ltd.* (27 C.L.R. 286 [1920]).

Powers of Court on appeal.

11. The Court, upon the hearing of an appeal, shall have power to draw inferences of fact, not inconsistent with the findings of the jury, if any, and to give any judgment and make any order which ought to have been given or made in the first instance, and to make such further or other order as the case requires.

The powers aforesaid may be exercised by the Court notwithstanding that the notice of appeal is that part only of the decision may be reversed or varied, and such powers may be exercised in favour of all or any of the respondents or parties, although such respondents or parties have not appealed from or complained of the decision.

The Court shall have power to make such order as to the whole or any part of the costs of appeal as is just.

As to power of Court to grant a new trial; see H.C.P. Act, s. 14.

Cross appeals.

12. It shall not be necessary for a respondent to give notice of cross appeal, but if a respondent intends upon the hearing of an appeal to contend that the decision appealed from should be varied, he shall within the time prescribed by the next following Rule, or such time as is allowed by special order of the Court or a Justice in any case, give notice of his intention to such of the parties as may be affected by such contention. The omission to give such notice shall not diminish the powers of the Court when hearing the appeal, but may, in the discretion of the Court, be ground for an adjournment of the appeal or for a special order as to costs. A copy shall be filed in the Registry.

Time.

13. Subject to any special order which is made in any case, notice by a respondent under the last preceding Rule shall be given ten clear days before the day for which the notice of appeal is given.

As to computation of time ; see Order LIII.

Transmission of Documents.

14. When the appeal is directed to be heard at a place other than that in which the Registry in which the cause is pending is situated the Registrar of the last-mentioned Registry shall transmit to the Registrar of the Registry situated at the place at which the appeal is to be heard all such documents as may be necessary for the hearing of the appeal. After the appeal has been disposed of, they shall be returned to the Registry in which the cause is pending.

Papers for Justices.

15. Four days at least before the commencement of the sitting for which the notice of appeal is given the appellant shall, unless otherwise ordered, lodge in the Registry situated in the place where the appeal is to be heard five printed copies of the Justice's notes taken at the hearing, including the notes of evidence, if any, and also a copy of the pleadings, if any, and of such other documents as may be necessary for the purposes of the appeal. The cost of copies of unnecessary documents will not be allowed.

As to regard being had to Justice's notes where question arises as to the ruling or directions of the Justice to a Jury; see r. 25, *infra.*

As to reasons of Justice's decision appealed from being included among papers; see r. 27, *infra.*

Printing may be dispensed with.

16. The Court or a Justice may in any case upon such terms as it or he thinks fit dispense with the printing of such documents, or of any portion thereof, and may direct a greater or less number of printed copies to be lodged, and may also direct printed copies to be served upon any person not a party to the case or matter.

Interlocutory orders not appealed from not to bar relief.

17. An interlocutory order or rule from which there has been no appeal shall not operate to prevent the Court, upon hearing an appeal, from giving such decision upon the appeal as is just.

Rule nisi on appeal.

18. When on an appeal from the refusal of an *ex parte* application the Court is of opinion that a rule nisi or order nisi should have been granted, the Court may grant a rule or order nisi returnable either before a Full Court or before a Court constituted by a single Justice.

2. *New Trials.*

Applications for new trials of causes heard before a Justice.

19. Except as by Rules of Court is otherwise specially provided, every application for a new trial or to set aside a verdict, finding, or judgment, in a cause or matter where there has been a trial by a Justice of the High Court without a jury, shall be made by appeal to a Full Court.

As to application for new trial of cases tried by jury; see r. 20, *infra.*

Applications or new trials of cases tried by jury to be by notice of motion.

20. Every application for a new trial or to set aside a verdict, finding, or judgment, in a cause or matter in which a verdict has been found by a jury, shall be made to a Full Court by motion upon notice. No rule nisi or order to show cause or other formal proceeding other than the notice of motion shall be made or taken. The notice shall state the grounds of the application, and whether all or part only of the verdict, finding, or judgment, is complained of.

Amendment of notice.

21. The notice may be amended at any time by leave of the Court or a Justice, upon such terms as the Court or Justice thinks just.

As to amendment generally ; see H.C.P. Act, ss. 23, 24, and Order XXVII

Time.

22. The notice of motion must be served upon the party in whose favour the judgment was given within twenty-one days from the conclusion of the trial or the date of the pronouncing of the judgment upon further consideration, as the case may be ; or within such extended time as the Court or a Justice allows.

The time of the vacations shall be reckoned in the computation of the period aforesaid.

General practice.

23. Except as aforesaid, all the provisions of the foregoing Rules of this section relating to appeals shall apply to applications for new trials or to set aside verdicts, findings, or judgments, in causes or matters in which a verdict has been found by a jury.

As to trial by jury; see H.C.P. Act, s. 12, *et seq.*

Power of Court.

24. Upon the hearing of an application for a new trial or to set aside the verdict or finding of a jury, the Court may, if satisfied that it has before it all the materials necessary for finally determining the questions in dispute, or any of them, or for awarding any relief sought, give judgment accordingly, and may for that purpose draw any inference of fact not inconsistent with the findings of the jury, if any ; or may, if it is of opinion that it has not sufficient materials before it to enable it to give judgment, direct the motion to stand over for further consideration, and may direct such issues or questions to be tried or determined and such accounts and inquiries to be taken and made as it thinks fit.

As to power of High Court to impose conditions or direct admissions on a new trial, and to grant it generally or on some particular points only, and to order testimony of a witness to be read on a new trial; see H.C.P. Act, s. 14.

As to powers of Court on appeal; see r. 11, *supra.*

3. *General Provisions.*

Notes of ruling or direction.

25. If, upon the hearing of an appeal or application for a new trial or to set aside a verdict or finding of a jury, a question arises as to the ruling or direction of the Justice to a jury, the Court shall have regard to the Justice's notes, and to such other evidence or materials as the Court deems expedient.

Appeal or motion for a new trial not to be stay of proceedings.

26. An appeal or motion for a new trial or to set aside a verdict, finding, or judgment, shall not operate as a stay of proceedings unless the Court or a Justice so orders. Any such order may be made as to the whole or any part of the proceedings in the cause or matter, and may be made upon such terms as the Court or Justice granting the stay thinks fit.

No intermediate act or proceeding shall be invalidated except so far as the Full Court directs.

As to stay of proceedings on institution of an appeal; see H.C.P. Act, s. 38, and Order XLIV., r. 1.

Reasons of Justices.

27. When the reasons for the decision of the Justice whose decision is appealed from have been given in writing, or are recorded in writing, a copy thereof shall be included with the documents transmitted to the Registry situated at the place at which the appeal is to be heard and shall be left at the Justices' Chambers.

Hearing may be expedited.

28. The hearing of an appeal, or of a motion for a new trial or to set aside a verdict or finding of a jury, may be expedited by order of the Court or a Justice.

SECTION II.

Appeals from Decisions of Judges of the Supreme Courts of the States in Causes or Matters Pending in the High Court.

Provisions of section I. to apply with certain modifications.

1. All the provisions of section I. of these Rules shall apply to appeals to the High Court from judgments of Judges of the Supreme Courts of the States sitting as Judges of first instance in the exercise of federal jurisdiction in causes or matters pending in the High Court, and to applications for new trials, or to set aside a verdict, finding, or judgment in any such cause or matter, subject nevertheless to the modifications set forth in the two (*a*) following Rules.

(*a*) As originally enacted, Section 2 of the Appeal Rules contained three rules. Since then the present Rule 2 has been inserted and new rules, 3 and 4, have been substituted for those originally standing as 2 and 3 respectively.

Place for hearing appeals.

2. Unless otherwise directed by the Court or a Justice such appeals and applications shall be heard at the seat of Government of the State. The Court or a Justice may direct that any such appeal or application shall be heard at the seat of Government of some other State.

Notice of appeal to be filed in Supreme Court and High Court.

3. A copy of the notice of appeal, or notice of motion for a new trial, or to set aside the verdict, finding, or judgment, shall be filed in the Supreme Court, and a copy shall also be filed in the Registry of the High Court situated at the seat of Government of the State; and the appeal shall not be deemed to be duly instituted until these copies have been filed.

Delivery and transmission of documents.

4. The proper officer of the Supreme Court shall deliver to the Registrar of the last-mentioned Registry of the High Court such documents as are necessary for the hearing of the appeal; and that Registrar, if the appeal is not to be heard in the State, shall transmit them to the Registrar of the Registry of the High Court situated at the place where the appeal is to be heard.

After the appeal or motion has been disposed of, the documents shall be returned to the proper officer of the Supreme Court, by or through the Registrar of the Registry in the State as the case may be.

SECTION III.

Appeals from Supreme Courts of the States.

Mode of instituting appeals.

1. Appeals to the High Court from judgments of the Supreme Court of any State, or any other Court of any State from which at the establishment of the Commonwealth an appeal lay to the Queen in Council, shall be instituted by notice of appeal (*a*), which shall be served and filed as hereinafter provided, and by giving the prescribed security; and no petition, case, or other formal proceeding other than the notice of appeal and security shall be necessary. The appellant may, by the notice of appeal, appeal from the whole or any part of the judgment appealed from, and the notice of appeal shall state whether the whole or part only of the judgment is complained of, and in the latter case shall specify the part complained of. The notice of appeal shall state shortly the grounds on which the appellant intends to rely.

As to power to grant a new trial; see H.C.P. Act, s. 14.

As to security; see H.C.P. Act, s. 35, r. 12, *infra*.

As to stay of proceedings under the judgment appealed from, see H.C.P. Act s. 38; r. 22, *infra*.

(*a*) Held by the High Court that an appeal by a husband to the High Court could not be entertained in the absence of service, personal or substituted, of the notice of appeal upon the wife: *Machin* v. *Machin* (21 C.L.R. 127 [1916]).

Place for hearing appeals.

2. Unless otherwise directed by the Court or a Justice, appeals shall be heard at the seat of Government of the State from a Court whereof the appeal is brought. The Court or a Justice may direct that any appeal shall be heard at the seat of Government of some other State.

Leave to appeal.

3. Leave or special leave to appeal to the High Court from any such judgment (*b*) where leave or special leave is required may be given by the High Court upon motion *ex parte* (*c*), and on such conditions, if any, as the Court thinks fit. On the hearing of the motion, such evidence shall be given on affidavit as the High Court requires (*d*). An order for leave or special leave to appeal may be rescinded on the motion of any respondent.

As to affidavits generally; see Order XXXV.

(*a*) Where an appeal brought as of right was at the time it came on for hearing struck out on the objection of the respondent that it was incompetent for the reason that the judgment appealed from was below the appealable amount, the Court allowed the respondent such costs only as would have been incurred on a motion to strike out the appeal: *Porta* v. *Hauser* (27 C.L.R. 192 [1919]).

(*b*) Held by the High Court that in applications for special leave to appeal, counsel for the respondent may be allowed to appear and oppose: *Collis* v. *Smith* (9 C.L.R. 490 [1909]).

(*c*) Held by the High Court that where an interlocutory judgment is regular, an application to set it aside should be supported by an affidavit of merits, and, although leave to appeal to the High Court from an interlocutory judgment of the Supreme Court of a State is granted almost as a matter of course, it will be refused where the proposed appeal is, on the material presented, hopeless: *Rubin* v. *Eacott* (15 C.L.R. 386 [1912]).

To whom notice to be given.

4. The notice of appeal shall be served upon all parties directly affected by the appeal (*a*), and it shall not be necessary to serve parties not so affected; but the High Court may direct notice of the appeal to be served on all or any parties to the cause or matter, or upon any person not a party, and in the meantime may postpone or adjourn the hearing of the appeal upon such terms as are just, and may give such judgment and make such order as might have been given or made if the persons served with such notice had been originally parties. Any notice of appeal may be amended at any time as the High Court thinks fit.

As to service; see Order LV.

As to amendment; see H.C.P. Act, ss. 23, 24.

(*a*) See note to r. 1, *supra*.

Machin v. *Machin* (21 C.L.R. 127 [1916]).

Time.

5. The notice of appeal must be served within the times following (*a*), respectively, that is to say:—

(1) If the appeal is of right, within twenty-one days from the date of the judgment appealed from;

(2) If the appeal is by leave or special leave of the High Court within twenty-one days from the date of the order of leave;

(3) In either case, if the appeal is from a judgment given or made before the commencement of the *Judiciary Act* 1903, within such extended time as the Court or a Justice allows.

The said respective periods shall be reckoned in the first case from the date when the judgment was pronounced, and in the second case, from the date when the order giving leave to appeal was made.

(*a*) For unsuccessful applications to extend time for filing notice of appeal, see *Lever Bros., Ltd.* v. *G. Mowling & Son* (5 C.L.R. 510 [1908]; XIV., A.L.R. 73 [1908]); *Ryan* v. *Rounsevell* (10 C.L.R. 176 [1910]); *Delph Singh* v. *Karbowsky* (18 C.L.R. 197 [1914]).

In *Ryan* v. *Rounsevell* a notice of appeal was, during vacation, when the offices of the High Court are open till one o'clock, handed to an officer of the Court at three o'clock in the afternoon on the last day of filing.

Title of proceedings for leave to appeal.

6. Affidavits intended to be used upon motions for leave or special leave to appeal, and orders giving leave or special leave to appeal, shall be entitled "In the High Court of Australia," and in the matter of the cause, which shall be described as pending in the Court from which the appeal is proposed to be brought.

Title of appeals.

7. Notice of appeal and all subsequent proceedings on appeals shall be entitled " In the High Court of Australia," " On appeal from " the Court from which the appeal is brought, naming it ; and shall also be entitled as between the party appellant and the party respondent.

Notice to Registrar.

8. The appellant shall, within the time prescribed for serving the notice of appeal, file a copy of the notice of appeal in the Court from which the appeal is brought and also in the Registry of the High Court at the seat of Government of the State in which the decision appealed from was given.

The fee payable on filing a copy of notice or motion instituting an appeal is 5/-.

Appealable nature of judgment to be shown by affidavit.

9. When the appeal is not brought by leave or special leave of the High Court, the appellant shall file with the notice of appeal an affidavit setting out sufficient facts to show that the judgment is one from which an appeal lies to the High Court without either leave or special leave (*a*) and shall file a copy of the affidavit with the copy of the notice of appeal in the Registry of the High Court.

(*a*) Held by the High Court that in an affidavit as to the appealable nature of a judgment filed under this rule, the statement that the judgment involves indirectly a question respecting property of the value of £300 is, in the absence of evidence to the contrary, a sufficient statement of the value : *Ashton & Parsons, Ltd.* v. *Gould* (7 C.L.R. 598 [1909]).

Appeal by leave.

10. When the appeal is brought by leave or special leave of the High Court, the notice of appeal shall state that it is so brought. A copy of the order giving leave to appeal shall be served with the notice of appeal, and a copy shall also be filed with the notice in the Court from which the appeal is brought.

Giving of unauthorized appeals.

11. When notice of appeal is given without the leave or special leave of the High Court in a case in which an appeal cannot be brought as of right (*a*), the Court from which the appeal is proposed to be brought or a Judge thereof, may set aside the notice (*b*).

(*a*) See note (*a*) to r. 3, *supra* : *Porta* v. *Hauser* (27 C.L.R. 192 [1919]).

(*b*) Held by *Pring*, J., of the Supreme Court of N.S.W., that this rule does not give a Judge of the Supreme Court of a State jurisdiction to set aside a notice of appeal from an interlocutory judgment where leave to appeal can be granted by the High Court or the Supreme Court : *McKeon* v. *Miller* (22 W.N. (N.S.W.) 22 [1905]).

Burnside, J., of the Supreme Court of Western Australia set aside a notice of appeal where leave had not been obtained. The Full Court of that State dismissed an appeal from his decision : *Milne* v. *James* (12 W.A. L.R. 111 [1910]).

On appeal to the High Court the appeal in this case was allowed, the High Court holding that on the facts of the case, appeal lay as of right : *Milne* v. *James* (13 C.L.R. 165 [1910]).

Security for costs of appeal.

12. Within three months after the service of notice of appeal, or such other time as is prescribed by an order giving leave to appeal (*a*), the appellant shall give the prescribed security (*b*), (*c*), for the costs of the appeal, and shall give notice thereof to the respondent (*d*).

Such security shall be given in the Court from which the appeal is brought.

If the security is not given within the prescribed time, the appeal shall be deemed to be abandoned (*e*).

As soon as it is given, the appeal shall be deemed to be duly instituted.

As to security; see H.C.P. Act, s. 35.

(*a*) Where security was lodged with an officer of the Court after hours on the last day for lodging security, the High Court overruled an objection that the security had not been lodged within the prescribed time: *Maine* v. *Lyons* (15 C.L.R. 671 [1913]; 19 A.L.R. 99 [1913]).

(*b*) The fact that a person who had a right to appeal from a decision of the Supreme Court of a State to the High Court and had given notice of such appeal was unable, through poverty to provide the funds necessary for an application to reduce or dispense with security for the costs of the appeal until it was practically too late to make such application before the time for giving such security had elapsed is not, by itself, a special circumstance which will justify the granting of special leave to appeal: *Westcott* v. *Westcott* (25 C.L.R. 495 [1918]).

(*c*) On an application to reduce the amount of or dispense with the security for costs of an appeal to the High Court from the Supreme Court of a State, where a similar application has already been refused, the matter is "*res judicata*": *Fisk* v. *Anderson* (19 C.L.R. 518 [1915]).

(*d*) Where security for costs of an appeal have been duly lodged within the time prescribed by this rule, the appeal will not be struck out merely because the appellant has not given the respondent notice of the lodging of the security until after the expiry of the time: *Hedberg* v. *Woodhall* (15 C.L.R. 531 [1913]; 19 A.L.R. 95 [1913]).

(*e*) An appellant omitted to lodge security within the prescribed time, and after the time had expired, applied to the High Court for extension of time and reduction of the security. The Court expressed a doubt whether they had power to extend the time owing to the appeal having lapsed, but, having regard to the special circumstances of the case, granted special leave to appeal and reduced the security conditionally upon the appellant setting down the appeal for the current sittings: *Miller* v. *Major* (4 C.L.R. 219 [1906]).

Held by *Griffith*, C.J., *Barton* and *Gavan Duffy*, J.J. (*Isaacs* and *Rich*, JJ., dissenting), that there is no jurisdiction in the High Court or a Justice thereof to extend the time prescribed by rule 12 of Section 3 of Part II. for giving security for the costs of an appeal from the Supreme Court of a State: *Delph Singh* v. *Karbowsky* (18 C.L.R. 197 [1914]).

Form of security.

13. Security may be given either by payment of money into Court or by bond with sureties to the satisfaction of the Prothonotary, Master, Registrar, or other proper officer of the Supreme Court.

Transmission of documents.

14. If the security is given within the prescribed time, the proper officer of the Court from which the appeal is brought shall forthwith transmit to the Registrar of the Registry of the High Court at the seat of Government of the State a certified copy of all such documents as are required for the hearing of the appeal (*a*), and, if the appeal is directed to be heard elsewhere than in the State, the Registrar shall transmit them to the Registrar of the Registry situated in the place where the appeal is to be heard.

A statement of the reasons of the Court for the decision shall, if practicable, be included in the documents so transmitted.

After the appeal has been disposed of they shall, if they have been received from another Registry, be returned to the Registry from which they were so received.

(*a*) As to what documents are required for the hearing of an appeal: *Wilkie* v. *Wilkie* (2 C.L.R. 383 [1905]; 11 A.L.R. (C.N.) 21 [1905]).

Setting down for appeal hearing.

15. The appeal shall be set down for hearing at a sitting of the High Court appointed for hearing appeals at the place at which it is to be heard. It shall be set down for the first such sitting appointed to be held after the expiration of two months from the due institution of the appeal (*a*), unless the respondent consents to its being heard at an earlier sitting.

If the appellant does not set down the appeal for hearing at that sitting, and, three weeks at least before the day appointed for holding the sitting, give notice to the respondent that he has done so, unless the respondent consents to take shorter notice, the respondent, or any respondent, if more than one, may apply to a Full Court, at any place at which it may be sitting, by motion upon notice for an order dismissing the appeal for want of prosecution (*b*).

The fee payable on setting down an appeal from a judgment of the Supreme Court of a State is £2.

(*a*) Held by the High Court that where an appellant has a substantial ground of appeal, and has shown his *bona fides* by properly giving security and taking all other necessary steps in the prosecution of his appeal, the mere failure to set the appeal down for hearing at the proper sittings of the Court as prescribed for in this rule, is not in itself, sufficient ground for dismissing the appeal for want of prosecution : *Brickwood* v. *Young* (2 C.L.R. 74 [1904]).

(*b*) Held by the High Court that where an appellant to the High Court from the Supreme Court of a State who has given notice of appeal and lodged the security, has by slip failed to set down the appeal for hearing on the proper day, the appeal will not be dismissed for want of prosecution under this rule if, there is no reason to suppose that the appellant does not intend to prosecute the appeal, if the respondent has suffered no loss, of if the slip has had no effect by way of putting off the hearing of the appeal : *Rankin* v. *Palmer* (16 C.L.R. 285 [1912]).

Cross-appeals.

16. It shall not be necessary for a respondent to give notice of motion by way of cross appeal, but if a respondent intends upon the hearing of an appeal to contend that the decision appealed from should be varied, he shall within the time prescribed by the next following Rule, or such time as is allowed by special order of a Full Court in any case, give notice of his intention to such of the parties as may be affected by the contention (*a*) (*b*). The omission to give such notice shall not diminish the powers of the High Court when hearing the appeal ; but may, in the discretion of the Court, be ground for an adjournment of the appeal or for a special order as to costs. A copy of the notice shall be filed in the Registry.

(*a*) Held by the High Court that where in one action two distinct causes of action are sued upon and judgment is given for the plaintiff as to one cause of action, and for the defendant as to the other, the fact that special leave to appeal to the High Court in respect of one of the causes of action is given to one of the parties does not entitle the other party to give a cross notice of appeal under this rule in respect of the other cause of action : *Wilson* v. *Moss* (8 C.L.R. 146 [1909] ; 15 A.L.R. 131 [1909]).

(*b*) It is sufficient to give notice to the appellant that the respondent intends on the hearing of the appeal to support an order for a new trial upon grounds stated : *Dun* v. *Macintosh* (3 C.L.R. 1134 [1906] ; 12 A.L.R. 581 [1906]).

17. Subject to any special order made in any case, notice by a respondent under the last preceding Rule shall be given one month before the day for which the appeal is set down for hearing.

Printed transcripts to be lodged.

18. Ten days at least before the day for which the appeal is set down for hearing the appellant shall, unless otherwise ordered, lodge in the Registry situated in the place where the appeal is to be heard

six printed copies of the transcript of documents referred to in Rule 14 of this Order, and shall also serve four printed copies of such transcript upon each of the parties directly affected by the appeal or upon their solicitors (*a*) (*b*). Persons suing or defending jointly shall be deemed a single party for the purpose of this rule.

(*a*) Held by the High Court that an order made *ex parte* for extending the time for lodging the transcript will not be set aside if the respondent is in no way aggrieved by it: *Rankin* v. *Palmer* (16 C.L.R. 285 [1912]).

(*b*) As to what documents are required for the hearing of an appeal: *Wilkie* v. *Wilkie* (2 C.L.R. 383 [1905]).

Printing may be dispensed with.

19. The Court or a Justice may in any case upon such terms and conditions as it or he thinks fit dispense with the printing of such documents or of any portion thereof, and may direct a greater or less number of printed copies (*a*) to be lodged or served upon any of the said parties.

(*a*) Typewriting is not printing within the meaning of Section 3, r. 19, of the Appeal Rules: *Peacock* v. *D. M. Osborne & Co.* (No. 2) (13 A.L.R. 254 [1907]).

Interlocutory judgment and orders not appealed from not to bar relief.

20. An interlocutory judgment or order from which there has been no appeal shall not operate to prevent the Court, upon hearing an appeal, from giving such decision upon the appeal as is just.

Notes of ruling or direction.

21. If, upon the hearing of an appeal, a question arises as to the ruling or direction of a Judge to a jury, the Court shall have regard to the verified notes or other evidence, and to such other materials as the Court deems expedient.

Stay of proceedings.

22. When an appeal has been duly instituted, the execution of the judgment appealed from (*a*) shall be stayed (*b*). The High Court or a Justice may nevertheless give leave to prosecute the judgment upon the party desiring to prosecute it giving security to the satisfaction of the Court to abide the decision of the Court on the hearing of the appeal (*c*).

As to stay of proceedings, see H.C.P. Act, s. 38.

(*a*) A defendant obtained leave to defend an action in the Supreme Court of Victoria upon payment of £500 into Court. At a later date judgment in the action was given him and an order was made that he be at liberty at the expiration of fourteen days to withdraw the said sum of £500. An appeal to the High Court against the judgment of the Supreme Court was instituted, but it was held by the Supreme Court that the order for payment out of the money was not "execution of the judgment appealed from" within the meaning of this rule: *Christie* v. *Robinson* (1907 V.L.R. 118; 13 A.L.R. 288 [1907]).

(*b*) An appeal to the High Court from any part of a decree of a State Court suspends the execution of the whole decree, including the part against which there is no appeal. (*Simpson*, C.J., in Equity, N.S.W.). *Bennett* v. *Browne* (5 S.R. (N.S.W.) 541 [1905]; 22 W.N. (N.S.W.) 185).

Where an appeal to the High Court has been duly instituted from a judgment of the Supreme Court, that fact does oust the jurisdiction of the Full Court to hear an appeal to it from the same judgment, and the Full Court on that account alone will not refuse to hear such appeal.

Held that the word "Court" in r. 16, Order LVIII. of the Rules of the Supreme Court, 1906, includes the Full Court: *O'Sullivan* v. *Morton* (1911 V.L.R. 235; 17 A.L.R. 140 [1911]; 32 A.L.T. 172).

(*c*) Prior to an amendment made to this rule in 1907, applications for leave to proceed with the judgment of a State Court on giving security to abide an appeal to the High Court might be made to the Court appealed from. Since that amendment it has been held by *Simpson*, C.J., in Equity (N.S.W.), that applications for such leave must be made to the High Court: *Maiden* v. *Maiden* (25 W.N. (N.S.W.) 140 [1908]).

SECTION IV.

Appeals from Decisions of Inferior Courts.

1. Appeals to the High Court from decisions of inferior Courts of a State in the exercise of Federal jurisdiction shall be brought in the same manner and within the same times, and subject to the same conditions, if any, as to security or otherwise, as are respectively prescribed by the law of the State for bringing appeals from the same Courts to the Supreme Court of the State in like matters (*a*), (*b*), (*c*), (*d*), (*e*).

(*a*) This rule does not preclude the High Court from entertaining an appeal, by way of order to review, from the decision of a Police Magistrate exercising Federal jurisdiction, notwithstanding that an appeal would not lie to the Supreme Court in the case in question: *Prentice* v. *Amalgamated Mining Employees' Association of Victoria and Tasmania* (15 C.L.R. 235 [1912]; 18 A.L.R. 343 [1912]).

(*b*) The Court will construe sec. 39 (2) (B) of the Judiciary Act liberally in favour of a party desiring to appeal. Therefore where a rule *nisi* for a prohibition was sought in respect of a decision of an inferior Court exercising Federal jurisdiction, the High Court will not necessarily require to be satisfied that the decision was *prima facie* wrong, although it is the practice in some States for the Supreme Court to insist on being satisfied under similar circumstances: *Ex parte Gordon* (3 C.L.R. 724 [1906]; 12 A.L.R. 106 [1906]).

(*c*) The provisions in Section 148 of the Justices Act 1890 (Vict.), which limits the total amount of costs that can be allowed in the Supreme Court upon an order to review a decision of a Court of Petty Sessions to £20, does not apply to the costs of an appeal by way of order to review from a Court of Petty Sessions exercising Federal jurisdiction: *Lyons* v. *Smart* (6 C.L.R. 285 [1908]; 14 A.L.R. 619 [1908]).

(*d*) Section 139 of the Justices Act 1890 (Vict.) provides that on an appeal from a Court of Petty Sessions to a Court of General Sessions before whom the same is heard and determined shall, if so required by any party to such appeal, state the facts specially for the determination of the Supreme Court thereon, in which case that Court may determine the same.

Quaere, whether under the Rules of the High Court, 1911, Part II., Sec. 4, r. 1, an appeal to the High Court from the Court of General Sessions exercising Federal jurisdiction may properly be brought by way of a case stated under that section: *Symons* v. *Schiffmann* (20 C.L.R. 277 [1910]).

Procedure in case of appeals by special leave.

2. When special leave is given to appeal to the High Court from a decision of an inferior Court in the exercise of Federal jurisdiction, the appeal shall, except so far as otherwise directed by the order giving special leave, be instituted in the same manner and within the same time as is prescribed by the last preceding Section of these Rules.

Notice to be filed in High Court.

3. When an appeal from an inferior Court is brought by notice of appeal the appellant shall within the term prescribed for giving the notice, file a copy thereof in the Court from which the appeal is brought, and also in the Registry of the High Court at the seat of Government of the State in which the decision appealed from was given.

Place of hearing.

4. Appeals from decisions of inferior Courts shall, unless otherwise directed by the Court or a Justice, be heard at the seat of Government of the State in which the decision was given. The Court or a Justice may direct that any such appeal shall be heard at the seat of Government of some other State.

Security.

5. When special leave is given to appeal from a decision of an inferior Court conditionally upon security being given by the appellant, such security shall be given in the Registry of the High Court at the seat of Government of the State.

Copy of proceedings to be filed.

6. Forthwith after the security has been given, or, if no security is required, forthwith after service of the notice of appeal, the appellant shall file in the Registry of the High Court of the State a verified copy of the proceedings of the Court from which the appeal is brought.

General provisions.

7. Except as herein or by law otherwise provided, the provisions of Section III. of these Rules shall apply to appeals to the High Court from decisions of inferior Courts.

SECTION IVA.

APPEALS FROM THE INTER-STATE COMMISSION.

Appeal by case stated.

Time for applying for leave.

1. Any party aggrieved by a decision of the Inter-State Commission who desires to appeal therefrom to the High Court on the ground that the decision is erroneous in point of law may, within twenty-one days after the pronouncing of the decision, apply in writing to the Commission to state and sign a case setting forth the facts and the questions of law arising thereon.

Notice to other parties.

2. Notice of such application shall be given within the same period to any other parties to the matter who may be affected by the proposed appeal.

Case to be filed in Principal Registry and notice given.

3. The case when stated and signed shall be sent to the Principal Registrar and filed by him in the Principal Registry.

Notice of such filing shall be given by the Principal Registrar to the proposed appellant and to the other parties to the appeal.

High Court to determine questions of law and make necessary Order.

4. The High Court shall hear and determine the question or questions of law arising upon the case, and may remit the matter to the Commission with the opinion of the High Court thereon, and may make such other order in relation to the matter as may seem just or expedient.

Case may be sent back for amendment.

5. The High Court may order a case to be sent back to the Commission for amendment, and thereupon the same shall be amended accordingly, and judgment shall be delivered by the High Court after it is amended.

SECTION V.

General Provisions.

Application of Rules relating to Original Jurisdiction.

1. The Rules of Court relating to the procedure of the Court in its Original Jurisdiction shall, so far as they are respectively applicable to appeals, apply to the procedure of the Court in its Appellate Jurisdiction. (*a*).

(*a*) Held by the High Court that where a copy of notice of appeal is not filed within the prescribed time, this rule does not apply, and therefore the High Court cannot under Part I., Order LIII., r. 6, enlarge or abridge the time for the copy of the notice of appeal: *Ryan* v. *Rounsevell* (10 C.L.R. 176 [1910]); *Lever Bros., Ltd.* v. *G. Mowling & Son* (5 C.L.R. 510 [1908]; 14 A.L.R. 73 [1908]).

In *Delph Singh* v. *Karbowsky* (18 C.L.R. 197 [1914]), it was held that the words "Procedure of the Court in the Appellate Jurisdiction" relate only to interlocutory proceedings in an appeal which was duly instituted.

Expediting appeals.

2. Notwithstanding anything contained in these Rules the Court or a Justice may expedite the hearing of any appeal of which notice has been filed in the High Court, whether the appeal has been duly instituted or not, and for that purpose may order the appeal to be set down for hearing on any day appointed for the Court to sit to hear appeals, and may abridge the time within which security (*a*) is to be given, or the length of notice to be given to the respondent to such extent and upon such terms as the justice of the case may require.

A like order may be made on granting leave or special leave to appeal.

(*a*) On an application to reduce the amount or dispense with the security for the costs of an appeal to the High Court from the Supreme Court of a State, where a similar application was refused, the matter is "*res judicata*": *Fisk* v. *Anderson* (19 C.L.R. 518 [1915]).

Dismissal for want of prosecution on appellant's application.

3. An order dismissing an appeal with costs for want of prosecution may be drawn up and signed by the Registrar on the application of the appellant without other warrant than this rule.

Provided that if notice of cross appeal or notice of intention to move to vary the decision appealed from has been given the order shall not be drawn up without the consent of the party respondent.

No. 162

HIGH COURT OF AUSTRALIA.

RULE OF COURT.

As of Tuesday, the 27th day of July, 1920.

It is ordered as follows:—

When any judgment is pronounced in any cause or matter either by a Full Court or a single Justice and the opinion of any Justice is reduced to writing it shall be sufficient to state

orally the opinion of the Justice without stating the reasons therefor but his written opinion shall be then published by delivering the same to the Registrar or Associate in open Court.

(Sgd.) ADRIAN KNOX, C.J.;
ISAAC A. ISAACS, J.;
HY. B. HIGGINS, J.;
FRANK GAVAN DUFFY, J.;
G. E. RICH, J.;
H. E. STARKE, J.

J. W. O'HALLORAN, Principal Registrar.

CRIMINAL PRACTICE.

Proceedings upon Indictments filed without previous Examination or Commitment for Trial.

Service of indictment.

1. When an indictment has been filed by the Attorney-General without examination or commitment for trial, an office copy thereof shall be served upon the accused person, upon which copy there must be indorsed a summons, under the hand of the Registrar and seal of the Court, requiring him to appear to the indictment within the same time after service within which he would be required to enter an appearance after service of a writ in a civil action. Such summons shall be indorsed upon the office copy whether a warrant for arrest is or is not granted. A notice shall be added to the summons informing the accused person that in default of his compliance with the exigency thereof a warrant may be issued for his arrest.

Evidence for warrant.

2. An application for a warrant to arrest the accused must be supported by affidavit.

Form of warrant.

3. The warrant shall be addressed to the Marshal and shall require him to keep the accused in safe custody until the time appointed for the trial of the indictment, and then to bring him before the Court at the time and place appointed for such trial.

Service of indictment.

4. An office copy of the indictment indorsed as aforesaid must be delivered to the accused at the time of arrest.

Applications for bail.

5. Applications for bail shall be made to a Justice sitting in Chambers.

Appearance.

6. The accused person is required, within the time limited by the summons, to enter an appearance in the Registry named in the summons in that behalf, and to deliver a copy thereof forthwith at the office of the Crown Solicitor for the Commonwealth, or his agent, in the State in which that Registry is situated.

The appearance shall state the address of the accused person. Any notice required to be given to him may be given to him at such address.

7. If the accused person does not enter an appearance a warrant may be issued for his arrest. Default of appearance.

8. When the accused person enters an appearance, either party may, on notice to the other party, apply to a Justice to appoint the time and place of trial, of which notice is to be given to the accused person. Time and place of trial.

PRACTITIONERS' ADMISSION RULES. (*a*)

(*a*) Statutory Rules, 1908, No. 35 (16th March, 1908) made under the Judiciary Act 1903; as amended by statutory rules 1913, No. 254 (22nd September, 1913); 1913, No. 330 (9th December, 1913); 1914, No. 148, 10th October, 1914.

1. These Rules may be cited as "The Practitioners' Admission Rules." Short title.

2. In addition to the persons entitled to practise in Federal Courts as Barristers and Solicitors by virtue of the Judiciary Act 1903, persons may become entitled so to practise upon the compliance with the provisions of these Rules. Admission of Federal Practitioners.

3. There shall be a Board called the "Commonwealth Practitioners' Board," constituted as follows:— The Board.

The members of the Board shall be the Attorney-General, the Secretary to the Attorney-General's Department, the Principal Registrar, and such practising barristers or solicitors as the Chief Justice may from time to time appoint by writing under his hand.

Three members of the Board shall form a quorum.

The Board may delegate all or any of its powers to a committee or committees consisting wholly or in part of members of the Board.

4. The Board shall appoint a Secretary. Secretary.

5. A person desirous of being admitted to practise in Federal Courts as a Barrister and Solicitor by virtue of these Rules must first be admitted by the Board as a Federal Student at Law. Students at Law.

6. The following persons only shall be eligible for admission as Federal Students at Law, that is to say, natural born or naturalised British subjects who are either:— Qualification of Students at Law.

(*a*) Graduates in arts, law, medicine, or science, or in some University in the British Dominions, or some other University approved by the Board, have obtained their degree after examination;

(*b*) Persons who have passed a preliminary examination which is recognised by the Board as sufficient.

Evidence of passing preliminary examination.

The following examinations may be so recognised, that is to say :—

An examination in Latin, English, Geometry, Algebra, History, and some one of the following subjects, namely :—

(*a*) Greek ;

(*b*) The French language and literature ;

(*c*) The German language and literature ;

(*d*) Logic ;

which is conducted by any University or Board constituted under the law of any State, so that the standard of proficiency required be not inferior to the standard required for the purposes of matriculation in some University in the Commonwealth, so far as the same is applicable to those subjects respectively.

Application for admission as Students at Law.

7. A person desiring to become a Federal Student at law must send or deliver to the Secretary of the Board a written notice in Form I. in the Schedule to these Rules, together with certificates in the Forms II. and III., and satisfactory evidence of having obtained such degrees or of having passed such examinations as aforesaid, which shall be submitted to the Board or Committee thereof duly appointed for that purpose.

Admission.

8. If the Board or Committee are satisfied, they shall admit the applicant as a student at law, and he there shall thereupon sign in a book, which shall be kept for that purpose in the Registry of the High Court in each State, a declaration in Form IV in the Schedule, and the Board shall then grant him a certificate, in Form V. of his admission as a student at law.

Duration of studentship at Law.

9. A student at law shall not be admitted as a Barrister and Solicitor before the expiration of a period, reckoned from the time of his admission as a student at law, which shall be as follows :—

(i.) If at that time he was a graduate in laws one year ;

(ii.) If at that time he was a graduate in arts, medicine, or science, two years ;

(iii.) In any other case, three years.

Students at Law to reside in the Commonwealth

10. During studentship, the student at law must be a bona fide resident within the Commonwealth.

Intermediate & Final examinations.

11. Before admission as a Barrister and Solicitor, the student at law must pass two further examinations called respectively the Intermediate Examination and the Final Examination, or produce to the Board evidence that he is entitled to dispensation from such examinations as hereinafter prescribed.

Evidence of passing Intermediate Examination.

12. The subjects of the Intermediate Examination shall be Jurisprudence (including Roman law) and Constitutional History and Law ; certificates of having passed examinations in such subjects, conducted by any University or Board constituted under the laws of any State, so that the standard of proficiency required for passing such examination be such as the Board may recognise as sufficient shall be deemed sufficient evidence of having passed the Intermediate Examination.

Time for Intermediate Examination.

13. A student at law may pass the Intermediate Examination at any time after his admission as such student.

Time for Final Examination.

14. The space of one year at least must intervene between the passing of the Intermediate and the passing of the Final Examination.

Subjects of Final Examination.

15. The subjects of the Final Examination shall be as follows :—

Section I.—The Law of Real and Personal Property, Equity, Admiralty, Insolvency, Probate, and Divorce.

Section II.—The Law of Contracts, the Law of Torts, Criminal Law, the Law of Evidence.

Section III.—Private International Law.

Section IV.—The Constitution of the Commonwealth and the States, the Statutes of the Commonwealth, the Jurisdiction and Practice of the High Court.

Evidence of Final Examination.

16. Certificates of having passed examinations in any of the subjects in Sections I., II., and III., conducted by any University or Board constituted under the Laws of any State so that the standard of proficiency required for passing such examination be such as the Board may recognise as sufficient evidence of having passed the Final Examination in those subjects.

16A. Examinations shall be conducted by persons appointed by the Board for that purpose.

Exempt from Examination.

17. A student at law who is a graduate in laws of any University in the British Dominions shall not be required to pass the Intermediate Examination, nor to pass in Sections I., II., and III. of the Final Examination.

A student at law desiring to take advantage of this Rule must submit to the Board evidence of his exemption at or before the time at which he would otherwise have been required or permitted to pass the examination.

Certificate.

18. When the Board is satisfied that a student at law has passed any examination, or is entitled to exemption from any examination, they shall deliver to him a certificate to the effect of Form VI. or Form VII.

Students-at-Law to attend High Court.

19. Every student at law shall, during the period of his studentship, attend the sittings of the High Court held in the State in which he is from time to time present, as often as it is reasonably practicable for him to do so.

Students' Attendance Book.

20. A Students' Attendance Book shall be kept at each Registry of the High Court, and every student attending the Court shall sign his name in the Book on each occasion of his attendance.

Defining time for Final Examination.

21. If the Board is not satisfied that a student at law has complied with the provisions of Rule 19, they may refuse to allow him to come up for Final Examination for such period as they may think fit, and may impose such conditions as to his future attendance in Court as they may think fit.

21A. The following persons, that is to say :—

(1) Every person who satisfiess the Board that he has

(*a*) Completed a period of ten years' service as an officer in a Registry of the High Court, and that he has, during the last five of such ten years been entrusted with duties requiring professional knowledge of law ; or

(*b*) Completed a period of ten years' service as a Clerk in the Office of the Crown Solicitor for the Commonwealth (including any Branch Office at the capital of a State), and that he has, during the last five of such ten years, been in charge of a sub-department of the office, and entrusted therein with duties requiring professional knowledge of law ; or

(*c*) Completed a like period of ten years' service partly in a Registry of the High Court and partly in the Office of the Crown Solicitor for the Commonwealth, and has, during the last five of such ten years, been charged with such duties as aforesaid ;

(2) Every person who satisfies the Board that he has completed a period of five years' service as an officer in a Registry of the High Court or in the Office of the Crown Solicitor for the Commonwealth (including any Branch Office at the capital of a State), or partly in a Registry of the High Court and partly in such Office, and that he has, for the last two years of such period, been Chief Clerk or Clerk in Charge of a Branch Office

shall have the status and shall be entitled to the privileges of a student at law who has passed the Intermediate Examination, and shall be entitled to submit himself at any time thereafter for the Final Examination, but shall not otherwise be subject to the foregoing provisions of these Rules imposing obligations upon students at law.

Admission.

22. When a student at law has passed his Final Examination the Board shall, upon his application, proceed to consider whether he is entitled to admission as a Barrister and Solicitor under these Rules, for which purpose they may require him to furnish such evidence as they think fit. If the Board are satisfied, they shall grant him a certificate in Form VIII., and thereupon he shall be entitled, upon payment of the prescribed fee, and upon motion made in open Court at any sitting of the High Court at which he is present, to be admitted as a Barrister and Solicitor of the High Court. Upon admission he shall sign a roll to be kept for that purpose.

Appeal from Board.

22A. The Board shall, before granting a certificate in Form VIII. to any of the persons mentioned in Rule 21A, require satisfactory evidence to be furnished that such person is of good fame and character and fit to be admitted to practise as a Barrister and Solicitor.

Removal and Suspension.

23. A student at law dissatisfied with any decision of the Board may appeal to the High Court or a Justice, and the Court or Justice may allow or dismiss the appeal or make such order as may be just.

Fees.

24. The High Court may, upon motion in open Court, order the name of a student at law to be removed from the list of students at law, or order the name of a Barrister and Solicitor admitted under these Rules to be struck off the Roll, or order a Barrister and Solicitor to be suspended from practice for such period and on such terms as may be just.

25. The following fees shall be payable under these Rules :—

	£	s.	d.
On application for Certificate of Admission as a student at law	5	5	0
On application for exemption from Intermediate Examination	1	1	0
On application for Intermediate or Final Examination in Section III.	5	5	0
On application for Certificate of having passed Final Examination	1	1	0
On Certificate for Admission as a Barrister and Solicitor ..	52	10	0

Application of fees.

26. All fees shall be paid to the Secretary of the Board, and shall be applied under the direction of the Board in defraying any expenses incurred in the execution of these Rules, including any fees paid to examiners appointed by them.

27. Persons qualified to practice as Barristers or Solicitors of the Superior Courts of the United Kingdom, or of any self-governing part of the British Empire may, if the Court deems that special and sufficient reason exists, be admitted on motion to practise as Barristers or Solicitors of any Federal Court.

FORMS OF PROCEEDINGS, ETC.

No. 1.—General Form of Writ of Summons.

In the High Court of Australia.

Between A.B. [an infant, by G.H., his next friend], Plaintiff.

and

C.D. and E.F., Defendants.

GEORGE THE FIFTH, by the Grace of God, of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, King, Defender of the Faith:

To C.D. of and E.F. of

WE command you that within days after the service of this writ on you inclusive of the day of such service, you do cause an appearance to be entered for you in Our High Court of Australia, in an action at the suit of A.B.; and take notice that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness: Y.Z., Chief Justice of Our said High Court, the day of in the year of Our Lord One thousand nine hundred and

[L.S.]

Memorandum to be subscribed on the Writ.

N.B.—This writ is to be served within twelve calendar months from the date thereof, or, if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

Appearance [*or* Appearances] to this writ may be entered by the defendant [*or* defendants] either personally or by solicitor at the Principal [*or* District] Registry of the High Court at (*Registry from which writ is issued*).

Additional memorandum to be subscribed on writs issued from District Registries.

If any defendant neither resides not carries on business in the State of (*State in which District Registry is situated*), his appearance may, at his option, be entered either at the place above mentioned or at the Principal Registry of the High Court at (*Principal Seat of Court*).

Indorsements to be made on the writ before issue.

The plaintiff's claim is, &c. (*state briefly the nature of the relief claimed in the action*),

This writ was issued by the plaintiff in person, who resides at , and whose address for service is at the same place [*or* at] [*or* This writ was issued by X.Y., of , whose address for service is at , solicitor for the plaintiff, who resides at , *or* This writ was issued by V.W., of , whose address for service is , agent for X.Y., of , solicitor for the plaintiff, who resides at] (*mention the locality and situation of the plaintiff's residence in such a manner as to enable it to be easily discovered*).

Indorsement to be made on the writ after service thereof.

This writ was served by me on the defendant at on day, the day of , 19

Indorsed the day of , 19

(Signed) M.N.

(Address)

No. 2—Writ of Summons in Actions in rem.

In the High Court of Australia.

A.B., Plaintiff,

against

The Ship X

[*or* The Ship X and freight

or the Ship X, her cargo and freight

or (*if the action is against cargo only*) The cargo *ex* the Ship (*state the name of ship on board of which the cargo is or lately was laden*),

or (*if the action is against the proceeds realised by the sale of a Ship or cargo*) The proceeds of the Ship X (*or* of the cargo *ex* the Ship X),

or Fifty Cases of Opium (*or as the case may be*)].

GEORGE THE FIFTH, by the Grace of God, &c.

To the owners and all others interested in the Ship X, her cargo and freight (*or as the case may be, describing the subject-matter of the action*):

WE command you, &c. (*as in Form No.* 1).

(*Memoranda and indorsements as in Form No.* 1)

Note.—If the action is by the Crown, instead of the plaintiff's name put "Our Sovereign Lord the King," *adding, if necessary,* "in His Office of Admiralty."

No. 3.—Writ of Service beyond the Jurisdiction, or when notice in lieu of Service is to be given beyond the Jurisdiction.

[*Title, &c., as in Form No.* 1.]

GEORGE, &c.

To C.D., of

WE command you that within days after the service of this writ [*or* notice of this writ (*as the case may be*)] on you, inclusive of the day of such service, you do cause an appearance to be entered for you in our High Court of Australia, in an action at the suit of A.B.; and take notice, that in default of your so doing the plaintiff may, by leave of the Court or a Justice, proceed therein, and judgment may be given in your absence. Witness, &c.

(*Memoranda and indorsements as in Form No.* 1)

Further indorsement to be made on the writ before the issue thereof, or before amendment to include a defendant to be served beyond the Commonwealth:—

N.B.—This writ is to be used where the defendant or all the defendants, or one or more defendant or defendants, is or are to be served beyond the Commonwealth of Australia. When the defendant to be served is not a British subject, and is not in British Dominions, notice of the writ, and not the writ itself, is to be served upon him.

No. 4.—Notice to be served beyond the Jurisdiction in lieu of Writ.

In the High Court of Australia.

Between A.B., Plaintiff.
and
C.D. and E.F., Defendants.

To E.F., of

Take notice that A.B., of , has commenced an action against you, E.F., in the High Court of Australia, by writ of that Court dated the day of A.D. 19 , which writ is indorsed as follows [*copy in full the indorsements*] ; and you are required within days after the receipt of this notice, inclusive of the day of such receipt, to defend the said action by causing an appearance to be entered for you in the said Court to the said action ; and in default of your so doing the said A.B. may, by leave of the Court or a Justice, proceed therein, and judgment may be given in your absence.

You may appear to the said writ by entering an appearance personally or by your solicitor at the Principal Registry of the Court at (*Principal Seat of the Court*) [or' your option (*if the writ is issued from a District Registry*), at the District Registry of the Court at (*place of District Registry from which writ is issued*)].

(Signed) A.B., of &c.
or
X.Y., of &c.
Solicitor for A.B.

No. 5.—Special Notice under Order XVI.

(*To be added after indorsement of claim on writ.*)

The defendant is required to take notice that, if he appears, the plaintiff intends to proceed to trial without pleadings.

No. 6.—General Form of Entry of Appearance by Defendant.

In the High Court of Australia.

(*Title as in writ of summons, adding after the name of any defendant who is an infant* "*by* G.H., his guardian *ad litem*)."

Enter an appearance in this action for the defendant C.D.

[The said defendant requires (*or* does not require) a statement of claim to be delivered.]

Dated, &c.

C.D., defendant in person
[*or* Y.Z., Solicitor for the Defendant C.D.]

The address of C.D. is

His address for service is

[*or* The place of business of Y.Z. is .]

His address for service is

No. 7.—Entry of Conditional Appearance.

(*Title, &c., as in Form No.* 1.)

Enter a conditional appearance in this action for the defendant C.D., who denies the jurisdiction of the Court to entertain the action against him without his consent [*or* denies that he is a partner in the defendant firm].

Dated, &c.

(*Signature and memoranda as in Form No.* 1, *omitting reference to statement of claim.*)

No. 8.—Affidavit for Entry of Appearance as Guardian.

(*Title, &c., as in writ of summons or originating proceeding.*)

I, Y.Z., of , solicitor, make oath and say as follows :—

G.H., of (*state residence and description*), is a fit and proper person to act as guardian *ad litem* of the above-named infant defendant, and has no interest in the matters in question in this cause adverse to that of the said infant, and the consent of the said G.H. to act as such guardian is hereto annexed marked with the letter A.

Signed and sworn, &c.

Note.—To this affidavit must be annexed the document signed by the guardian in testimony of his consent to act, which may be in the following form :—

I, G.H., of (*state residence and description*), consent to act as guardian *ad litem* of C.D., an infant defendant in this cause, and I authorize Mr. Y.Z., of, &c., solicitor, to defend this cause as solicitor for me as such guardian.

G.H.

Witness X.Y.

No. 9.—General Form of Notice of Appearance by Defendant.

(*Title, &c., as in writ of Summons.*)

Take notice that I have this day entered an appearance in this action at the Principal [*or* District] Registry of the High Court of Australia at [for the defendant C.D.].

I require [*or* do not require] [*or* The said defendant requires (*or* does not require)] a statement of claim to be delivered.

C.D., defendant in person

[*or* Y.Z., Solicitor for the Defendant C.D.]

The address of C.D. is

His address for service is

[*or* The place of business of Y.Z. is

His address for service is

In the case of a conditional appearance insert the word "conditional" *before* "appearance."

No. 10.—Indorsements of Claim in Admiralty Actions.

Damage by Collision.—The plaintiffs, as owners of the ship *Mary* (her cargo, &c., *or as the case may be*), claim the sum of £ against the ship *Jane* for damage occasioned by a collision which took place (*state where*) on the day of

Salvage.—The plaintiffs, as the owners, master, and crew of the ship *Mary* claim the sum of £ for salvage services rendered by them to the ship *Jane* (her cargo and freight, &c., *or as the case may be*) on the day of 19 , in or near (*state where the services were rendered*).

Pilotage.—The plaintiff claims the sum of £ for pilotage of the ship *Jane* on the day of 19 , from (*state where pilotage commenced*) to (*state where pilotage ended*).

Towage.—The plaintiffs, as owners of the ship *Mary*, claim the sum of £ for towage services rendered by the said ship to the ship *Jane* (her cargo and freight, &c., *or as the case may be*) on the day of 19 , at or near (*state where the services were rendered*).

Master's Wages and Disbursements.—The plaintiff claims the sum of £ , for his wages and disbursements as master of the ship *Mary* (and to have an account taken thereof).

Seamen's Wages.—The plaintiffs, as seamen on board the ship *Mary*, claim the sum of £ , for wages due to them, as follows :—

To A.B., the mate, £30 for two months' wages from the day of

To C.D., able seaman, £ , &c., &c.

(and the plaintiffs claim to have an account taken thereof).

WARRANT OF ARREST IN ADMIRALTY ACTIONS.

Necessaries, Repairs, &c.—The plaintiffs claim the sum of £ , for necessaries supplied (*or* repairs done, &c., *as the case may be*) to the ship *Mary* at the port of on the day of (and the plaintiffs claim to have an account taken thereof).

Possession.—(*a*) The plaintiff, as sole owner of the ship *Mary*, of the port of , claims possession of the said ship.

(*b*) The plaintiff, as owner of 48-64th shares of the ship *Mary*, of the port of , claims possession of the said ship as against C.D., owner of 16-64th shares of the same ship.

Mortgage.—The plaintiff, under a mortgage dated the day of , claims against the proceeds of the ship *Mary* the sum of £ as the amount due to him for principal and interest.

Claims between Co-Owners.—(*a*) The plaintiff, as part owner of the ship *Mary*, claims against C.D., part owner of the same ship, the sum of £ as part of the earnings of the said ship, due to the plaintiff, and to have an account taken thereof.

(*b*) The plaintiff, as owner of 24-64th shares of the ship *Mary*, being dissatisfied with the management of the said ship by his co-owners, claims that his co-owners shall give bail in the sum of £ , the value of his said shares, for the safe return of the ship to .

Bottomry.—The plaintiff, as assignee of a bottomry bond, dated the day of , and granted by C.D. as master of the ship *Mary*, of , to A.B. at the port of , claims the sum of £ against the ship *Mary* (her cargo and freight, &c., *or as the case may be*) as the amount due to him under the said bond.

Derelict.—A.B. claims to have the derelict ship *Mary* (*or* cargo, &c., *or as the case may be*) condemned as forfeited to His Majesty in His Office of Admiralty.

Piracy.—A.B., Commander of H.M.S. *Torch*, claims to have the Malay prahu *Foo Sung* and her cargo condemned as forfeited to His Majesty as having been captured from pirates.

Under Foreign Enlistment Act.—A.B. claims to have the British ship *Mary*, together with the arms and munitions of war on board thereof, condemned as forfeited to His Majesty for violation of *The Foreign Enlistment Act* 1870.

Under Customs Acts.—A.B. claims to have the ship *Mary* (*or as the case may be*) condemned as forfeited to His Majesty for violation of (*state Act under which forfeiture is claimed*).

Recovery of Pecuniary Forfeiture or Penalty.—A.B. claims judgment against the defendant for penalties for violation of (*state Act under which penalties are claimed*).

Warrant of Arrest in Admiralty Action In Rem.

George, &c.

To the Marshal of our High Court of Australia in Admiralty.

We hereby command you to arrest the ship or vessel of the port of (and the cargo and freight, &c., *as the case may be*), and to keep the same under safe arrest until you shall receive further orders from us.

Witness, &c.

No. 11. Form I.

Notice of desire to become a student-at-law.

To the Commonwealth Practitioners' Board.

I, , of (*add residence and occupation*) do hereby declare that I am desirous to become a student-at-law for the purpose of being admitted to practise as a Barrister and Solicitor in the High Court of Australia.

The particulars given below are true to the best of my knowledge and belief.

Dated the day of 19 .

(Signed).

(1) Name of candidate :
(2) Residence :
(3) Occupation :
(4) Name of father :
(5) Residence of father :
(6) Profession or calling of father :
(7) Date and place of birth :

No. 12. FORM II.

Certificate of three householders to accompany Form I.

To the Commonwealth Practitioners' Board.

We, the undersigned householders, resident in , certify that we have known , who now resides at , for years.

We believe him to be a person of good fame and character, and to be a fit person to be admitted as a student-at-law of the High Court of Australia.

Dated this day of 19 .

(Signed) A.B.
C.D.
E.F.

No. 13. FORM III.

Certificate by two practising Barristers or Solicitors on the Commonwealth Registry, to accompany Form II.

To the Commonwealth Practitioners' Board.

We certify that we know , and that we believe him to be a fit person to be admitted as a student-at-law of the High Court of Australia.

Dated this day of 19 .

(Signed) A.B.
C.D.

Practising Barristers or Solicitors of the said Court.

No. 14 FORM IV.

Declaration.

I, , do sincerely promise that I will obey the Rules of the High Court of Australia, so far as they may apply to me.

Dated this day of 19 .

(Signed)

No. 15 FORM V.

Board's Certificate of Admission as student-at-law.

This is to certify that A.B. of , has complied with the Rules as to the admission of students-at-law of the High Court of Australia.

Dated this day of 19 .

C.D.

Secretary of the Commonwealth Practitioners' Board.

No. 16 FORM VI.

Board's Certificate as to Intermediate or Final Examinations.

This is to certify that A.B., of , has passed the examination prescribed by the Rules relating to the admission of Barristers and Solicitors to practise in the High Court of Australia.

Dated this day of 19 .

C.D.

Secretary of the Commonwealth Practitioners' Board.

No. 17 FORM VII.

Board's Certificate as to Exemption from Examination or from Examination in Certain Subjects.

This is to certify that A.B., of , has satisfied the Board that he is entitled to exemption from the Intermediate Examination (*or* the Final Examination in Sections I. and II.) under the Rules relating to the admission of Barristers and Solicitors to practise in the High Court of Australia.

Dated this day of 19 .

C.D.

Secretary of the Commonwealth Practitioners' Board.

No. 18. FORM VIII.

Board's Certificate of Compliance with Rules.

This is to certify that A.B., of , has complied with the Rules relating to the admission of Barristers and Solicitors to practise in the High Court of Australia.

Dated this day of 19 .

C.D.

Secretary of the Commonwealth Practitioners' Board.

SCALE OF FEES.

No. 19. I.—To be taken in the Registries.

Summons, Writs, and Commissions.

	£	s.	d
On sealing a writ of summons for commencement of an action	0	10	0
On sealing a concurrent writ of summons for commencement of an action	0	2	6
On sealing a writ of subpoena for not more than three persons ..	0	5	0
For every additional person named in the subpoena	0	1	0
On sealing a writ of execution	0	5	0
On sealing a writ of mandamus, certiorari, habeas corpus, or prohibition	1	0	0
On sealing writ of assistance	0	10	0
On sealing writ of inquiry	0	10	0
On sealing any other writ	0	5	0
On sealing a renewed or amended writ of summons	0	5	0
On sealing any originating summons	0	5	0
On sealing summons for directions under Order XV.	0	5	0
On sealing any other summons	0	3	0
On sealing any commission issued by authority of the Court or a Justice whether under the authority of a Statute or of Rules of Court ..	1	0	0
On sealing any document issued from the Court for use beyond the jurisdiction of the Court, not being a writ or other document for service on a party to a cause or matter	0	10	0
On sealing any other document with the Seal of the Court..	0	10	0

The above fees include the filling of all copies or praecipes or other documents required to be filed on the sealing or issuing of the above documents.

Appearances.

On entering an appearance, for each person	0	2	6
If by a corporation or joint stock company or a company incorporated by Statute or Royal Charter	0	10	0

Copies.

For an office copy of any record of the Court, or of any document filed in the Registry, if in the English language, for every folio.. ..	0	0	8
If in a foreign language, the actual cost of making and examining same, and in addition for marking and sealing same as an office copy ..	0	2	6
For an office copy of a plan, map, section, drawing, photograph, or diagram, the actual cost of making and examining same, and in addition for marking and sealing same as an office copy	0	2	6

Attendances.

On an application, with or without a subpoena, for any officer, not being the Associate of the Justice presiding at the Court, to attend with any record or document at any Court or place out of the Court building, in addition to the just charges and expenses of the officer for each day or part of a day he shall necessarily be absent from his office	1	0	0

The officer may require a deposit on account of any further fees, charges, or expenses which may probably become payable beyond the amount paid for fees, charges, and expenses on the application, and the officer or his clerk taking such deposit shall thereupon make a memorandum thereof on the application.

The officer may also require an undertaking in writing to pay any further fees, charges, and expenses which may become payable beyond the amounts so paid and deposited.

	£	s.	d.
Securities.			
On making appointment to inquire into sufficiency of securities	0	1	0
On attesting execution of instrument of security under Order XXVIII., whether by one or more sureties, and whether entered into by all at one time or not	0	10	0
On inquiring as to sureties under Order XXVIII., and indorsing approval on instrument of security	0	5	0
On vacating a recognisance	0	10	0
Filing.			
On filing a special case	1	0	0
On filing special case, being an appeal from an inferior Court	0	10	0
On filing an instrument of security under Order XXVIII.	0	5	0
On filing a copy of a notice of motion originating a cause or matter	0	10	0
On filing a petition originating a cause or matter, including the sealing of the indorsement of time appointed for hearing on all copies of the petition intended for service	0	10	0
On filing any other petition	0	5	0
On filing any pleading or other document required to be delivered, when no appearance entered	0	2	6
On filing a notice of change of solicitor	0	2	6
On filing, unless otherwise provided, an affidavit, deposition, or set of depositions, including any annexures to any such affidavit or deposition	0	2	6
On filing exhibits referred to in an affidavit or deposition and not annexed thereto, and required to be filed, for each exhibit	0	1	0
But not to exceed	0	5	0
On filing a writ of execution with return	0	2	6
On filing a preliminary Act in actions for damage by collision	0	5	0
On depositing in any cause or matter any documents ordered to be deposited for safe custody or to be impounded, for each document	0	1	0
On a receipt for any document or documents to which the last fee applies when delivered out	0	1	0
On filing notice of discontinuance of an action or withdrawal of part of a cause of action by a plaintiff or a counter-claiming defendant	0	2	6
On filing a consent in writing signed by the parties withdrawing a cause which has been entered for trial	0	2	6
On filing a copy of the pleadings and issues or such other proceedings as show the questions for trial by the party entering the trial	0	2	6
On filing a written request to set down a cause or matter for further consideration	0	5	0
On filing a written authority to use a person's name as next friend	0	2	6
On filing a disclaimer of office by defendant under Order XLVII.	0	5	0
On filing notice under Queensland Justices Act	0	5	0
On filing a bill of costs for taxation	0	2	6
On filing a certificate of an examiner of refusal of a witness to attend or to be sworn	0	2	6
On an examiner filing a question to which a witness objects, together with the objection	0	2	6
On filing a copy of notice of motion instituting an appeal	0	5	0
On filing any document in respect of which no other fee is provided	0	1	0
Payment into Court.			
On payment of money into Court	0	5	0
Certificates.			
For a certificate of an associate of the result of trial	1	0	0
For a certificate of taxing officer of result of taxation of bill of costs	0	2	6
For a certificate of the Registrar of the result of any proceeding before him	0	5	0

Searches.

On a search for appearance	0	1	0
Unless otherwise expressly provided by any Act of Parliament, Rules of Court, or this Schedule, on a search in any register kept in the Registry, or on searching an index or calendar to the files or bundles of documents filed, and inspecting the documents, for every hour or part of an hour occupied	0	2	6
Not to exceed per day	0	10	0
Provided that if a search is made in more than one register an additional search fee shall be charged for every register beyond the first.			
Inspecting any documents deposited pursuant to an order for safe custody or impounded	0	2	6

Examination of Witnesses.

On obtaining appointment for examination of a witness before an officer of the Court	0	5	0
In respect of every witness sworn and examined by an officer of the Court in his office, unless otherwise provided, including oath, for each hour or part of an hour	0	10	0
For an examination of witnesses by any such officer away from the office, in addition to reasonable travelling and other expenses, per day or part of a day	3	0	0
The officer may require a deposit on account of fees and expenses which may probably become payable beyond any amount paid for fees and expenses upon the examination; and the officer or his clerk taking such deposit shall thereupon make a memorandum thereof and deliver the same to the party making the deposit.			
The officer may also require an undertaking, in writing, to pay any further fees and expenses which may become payable beyond the amount so paid and deposited.			
On examination of witnesses by persons other than officers of the Court (these fees to be retained by examiner for his own use).			
Upon giving an appointment to take an examination	0	5	0
Or, if evidence taken on commission, for giving such appointment, to each commissioner who acts at the examination	0	5	0
If the time occupied in an examination is less than three hours	3	0	0
If the time occupied in an examination is more than three hours, for each day or part of a day	5	0	0
When evidence is taken on commission, the two preceding fees shall be paid to each commissioner who acts at the examination.			
On a request to examine witnesses abroad, such fee shall be payable to the examiner as is prescribed by the laws of the country where the examination is to take place, and shall be paid to the Registrar to be transmitted with the request.			
The term " Officer of the Court " does not include an associate.			

Hearing.

On setting down an appeal to the Full Court from a judgment of the Supreme Court of a State or of a Judge of the Supreme Court of a State	2	0	0
If from an order made in Chambers	1	0	0
On setting down an appeal from an inferior Court to the Full Court, whether by special case or otherwise	1	0	0
On entering a special case or demurrer for argument, either before a single Judge or before the Full Court, in the first instance, including in the latter case, when necessary, the filing of the memorandum requiring same to be entered before the Full Court	1	0	0
On filing like memorandum of another party	0	5	0
On entering an action for trial before a Justice, with or without a jury, in addition to the fees, if any, payable in respect of the jury	1	0	0
On entering an election petition for trial	1	0	0

	£	s.	d.
On hearing an action on motion for judgment	0	10	0
On hearing any cause or matter set down for further consideration ..	0	10	0
On hearing any cause or matter commenced by a motion on notice or by petition, except when otherwise provided	1	0	0
On hearing any other petition in Court	0	5	0
On setting down an appeal from a Justice of the High Court	2	0	0
On setting down any appeal not above mentioned..	1	0	0

Drawing up and entering Judgments and Orders.

If made in Court on the original hearing, or hearing on further consideration of a cause, or on the hearing of a special case or petition, or on application to the Full Court, unless otherwise provided ..	1	0	0
If a judgment without hearing, or by consent	0	10	0
If a judgment under Order XXVI., Rule 7 or Rule 8, or Order XXX., Rule 3, or Order XXXI., Rule 2	0	10	0
Any other order, whether made in Court or at Chambers..	0	5	0

The above fees include filing the duplicate original.

Taxation of Costs.

	£	s.	d.
For taxing a bill of costs when the amount does not exceed £10	0	2	0
When the amount exceeds £10, for every £5 allowed or a fraction thereof	0	0	6

These fees, except where otherwise provided, shall be taken on signing the certificate or on the allowance of the bill of costs as taxed, but the fees shall be due and payable, if no certificate or allocatur is required, on the amount of the bill as taxed, or on the amount of such part thereof as may be taxed, and the solicitor, or party suing in person, shall in such case pay the proper sum, the amount whereof shall be fixed by the taxing officer.

The taxing officer may require a deposit on account of fees before taxation, not exceeding the fees on the full amount of the costs as submitted for taxation, and the officer on taking such deposit shall make a memorandum thereof on the bill of costs.

Miscellaneous.

On a fiat of a Justice	0	5	0
On a party attending before a Judge signifying his consent to a consent order being drawn, to enter judgment against him	0	5	0
On entering a satisfaction of judgment	0	5	0

II.—To be taken in the Marshal's Offices.

The same fees are to be taken as by the practice of the Supreme Court of the State in which the proceeding is taken or the act is done or authorized and required to be taken by the Sheriff in respect of a like proceeding or act in a cause pending in that Court.

A deposit on account of the fees applicable to any proceeding or act may be required before such proceeding is commenced or act done, or at any time during the course thereof, and a memorandum of the amount deposited shall be delivered to the party making the deposit.

In case of dispute as to any of the charges the amount is to be taxed by the taxing officer without fees.

III.—To be taken by Commissioners for Affidavits.

For each oath or affirmation	0	1	6
If not at Registry or Commissioner's office	0	5	0
Or if above one mile from Registry or Commissioner's office, over and above travelling expenses	1	1	0
For marking each sheet of an affidavit or affirmation or of an annexure	0	1	0
For signing each certificate to an exhibit	0	1	0
For attesting each instrument of security, for each surety..	0	5	0

Note.—In the case of Commissioners who are not subject to the provisions of the *Commonwealth Public Service Act* 1902, such fees may be retained by the Commissioners for their own use.

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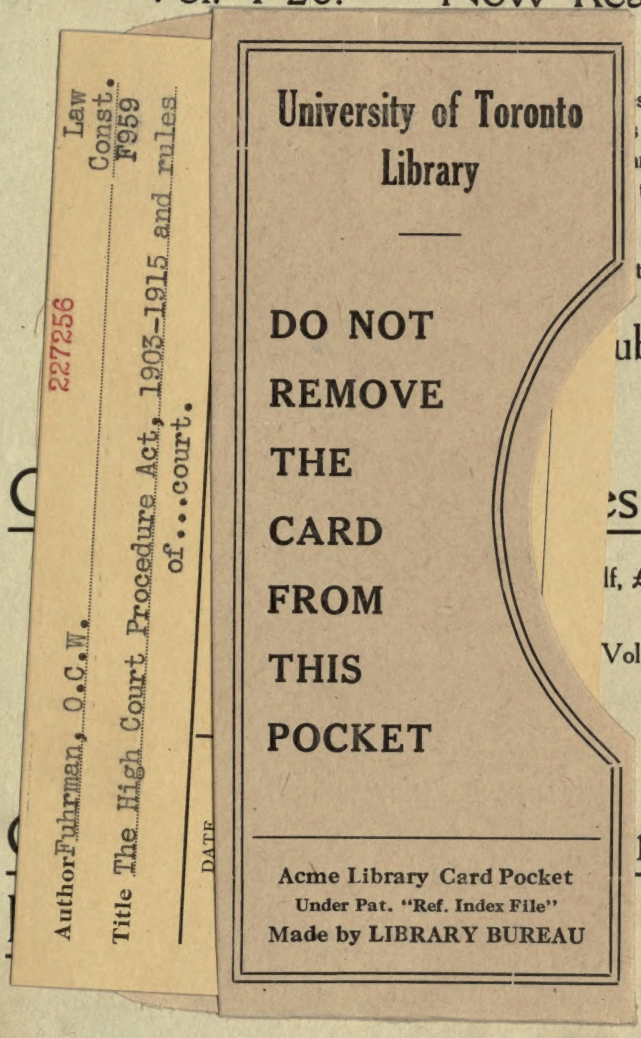
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